

## **Primary Trip Insurance**

Subject to the terms and conditions set forth within this policy, Underwriters as shown below, hereinafter referred to as the Assurer, do insure the individual Pilot providing services, the San Francisco Bar Pilots, The San Francisco Bar Pilots Benevolent Association and their officers and employees hereinafter called the Assured, for a limit of \$36,000,000 any one accident or occurrence, against the hereinafter described losses and liabilities arising out of, or relating to, directly or indirectly the acts, omissions or negligence of licensed pilots, officers or employees of San Francisco Bar Pilots in connection with the provision of pilotage service, provided that such losses and liabilities occur while a licensed pilot or authorized trainee from San Francisco Bar Pilots is piloting the vessel on whose behalf this policy has been procured.

The coverage provided by this policy attaches solely to the individual vessel movement for which trip insurance has been ordered pursuant either to the provisions of California Senate Bill No. 1109 or to private agreement between the Assured and the owners, master, operators, charterers or agents of the vessel. The period of the coverage hereunder is limited to the period the pilot is aboard the vessel or piloting services are provided.

The Assurer hereby undertakes to make good to the Assured or successors, all such loss and/or damage and/or expenses as the Assured shall have sustained and/or shall have become legally liable to pay on account of the consequences of acts, omissions or negligence of either licensed pilots of the San Francisco Bar Pilots and The San Francisco Bar Pilots Benevolent Association, or officers or employees of San Francisco Bar Pilots and The San Francisco Bar Pilots Benevolent Association: provided, however, that such insurance provides coverage only for that proportion of losses, damages and expenses sustained by the Assured, or other parties, which are proximately caused by the acts, omissions or negligence of the Assured and that no coverage is provided for losses, damages and expenses resulting from any other cause whatsoever.

1. The Assured under this policy is protected and indemnified for losses and damages resulting from liabilities, risks, events, happenings and/or occurrences set forth within this policy including but not limited to:
  - (a) For loss or damage that may be caused to the vessel being navigated by the pilot.
  - (b) For loss or damage that may be caused to any vessel, or waterborne craft of any description, by the vessel being navigated by the pilot.
  - (c) For loss or damage that may be caused to any wharves, piers, stages

and similar structures, or any other property afloat or ashore, by the vessel being navigated by the pilot.

- (d) For loss or damage, whether by collision or otherwise, which may be caused to any goods, merchandise, equipment or other thing of value whatsoever, whether on board any vessel or waterborne craft, or not, or to any vessel or waterborne craft, pier, jetty, or other movable or fixed thing whatsoever.
  - (e) For loss of life or personal injury, whether by collision or otherwise, to any person other than employees of San Francisco Bar Pilots, wheresoever such person or persons may be.
  - (f) For Pollution Liabilities as described in the attached Pollution Exclusion and buyback wording.
  - (g) The provisions of California Senate Bill No. 1109 and the provisions of the agreements between San Francisco Bar Pilots and the owners, operators, charterers and agents of vessel on whose behalf piloting services are rendered have been made available to Assurer. It is the intent of the Assurer and the Assured that the Assured's legal liabilities that would otherwise be covered by the exculpatory and indemnification clauses set forth within California Senate Bill No. 1109 and within the pilot Contract and agreement as described above be insured by this policy, except as may be specifically excluded by the terms and conditions as shown below.
2. Liability hereunder in respect to any one accident is limited to the amount of this policy; but the face value of this policy shall always remain at its original amount irrespective of any payments made or expenses incurred by the Assurer.
- (a) It is understood and agreed that any payment in respect of liability for any one accident or occurrence shall not act to reduce the policy limits hereunder in respect of liability for any subsequent accident or occurrence, it being understood the full policy limit shall remain in full force and effect for each separate accident or occurrence during the entire period this policy is in force.
  - (b) However, it is also understood and agreed that the naming of any additional Assured(s) shall not serve to increase the policy limit in respect of any one accident or occurrence hereunder, notwithstanding the fact that liability may be asserted against more than one Assured, separately or combined.
  - (c) It is also understood and agreed that liability for all loss, damage, cost, or expense, including all costs of investigation, defense, negotiation or settlement shall be included in the policy limit and shall not exceed

\$36,000,000 in respect of any one accident or occurrence.

3. The Assured shall give prompt written notice of all claims to Marsh Risk & Insurance Services, One California Street, San Francisco, CA 94111. All losses under this policy shall become due and payable within ninety (90) days after the submission of satisfactory proof thereof, and shall be paid to the Assured, or order.
4. The Assurer shall be subrogated to all rights which Assured may acquire against any third person, entity or vessel, by reason of any payments made to the Assured upon claims upon which the Assured is entitled to be indemnified under this policy, to the extent of such payment, and the Assured shall, upon the request of the Assurer, execute all documents necessary to secure to the Assurer such rights.
5. If any dispute arises under this policy the parties hereto shall submit the same to arbitration, for which purpose one arbitrator is to be chosen by the Assurer and one by the Assured. The two so chosen, if unable to agree shall select a third as umpire and the award of any two shall be final as between the parties. The cost of arbitration, including arbitrator's fees, shall be assessed by the arbitrators.
6. Notwithstanding anything to the contrary, contained in the policy, this insurance is warranted free from any claim for loss, damage or expenses caused by or resulting from capture, seizure, arrest, restraint or detainment or the consequence thereof or of any attempt, threat, or any taking of the vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise, also from consequences of hostilities or warlike operation (whether there by a declaration of war or not), piracy, civil war, revolution, rebellion or insurrection, or civil strife arising therefrom.
7. Notwithstanding anything contained in the policy, this insurance is warranted free from any claim for loss, damage or expense caused solely by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions.
8. Notwithstanding anything contained in the policy, any shift or engagement involving air drafts of less than ten feet under the Golden Gate Bridge and/or Bay Bridge must be reported to Underwriters in advance of binding coverage under this Section, and may be subject to additional premium.

## **POLLUTION EXCLUSION AND BUYBACK CLAUSE**

Such coverage as is afforded by this policy shall not apply to any claim arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, alkalis, toxic chemicals, liquids or gases, waste materials, oil or other petroleum substance or derivative (including any oil refuse or oil mixed wastes) or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any watercourse or body of water.

This exclusion shall not apply, however, provided that the Assured establishes that all of the following conditions have been met:

- (a) The occurrence was accidental and was neither expected nor intended by the Assured. An occurrence shall not be considered unintended or unexpected unless caused by some intervening event neither foreseeable nor intended by the Assured.
- (b) The occurrence can be identified as commencing at a specific time and date during the term of this policy.
- (c) The occurrence became known to the Assured within 7 days after its commencement.
- (d) The occurrence was reported in writing to these underwriters within 90 days after having become known to the Assured.
- (e) The occurrence did not result from the Assured's intentional and willful violation of any government statute, rule or regulation.

Nothing contained in this Endorsement shall operate to provide any coverage with respect to:

- (1) loss of, damage to or loss of use of property directly or indirectly resulting from subsidence caused by sub-surface operations of the Assured;
- (2) removal of, loss or damage to sub-surface oil, gas or any other substance;
- (3) fines, penalties, punitive damages, exemplary damages, treble damages or any other damages resulting from the multiplication of compensatory damages;
- (4) any site or location used in whole or in part for the waste, processing, treatment, storage, disposal or dumping of any waste materials or substances or the transportation of any waste materials or substances.

Notwithstanding any other provision of this policy or any underlying insurance, this policy of insurance is not evidence of financial responsibility under the Oil Pollution Act of 1990 or any

similar federal or state laws. Any showing or offering of this policy by the Assured as evidence of insurance shall not be taken as any indication that the Underwriters consent to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Underwriters do not consent to be guarantors or to be sued directly.

**ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED**

**Senate Bill No. 1109**

**CHAPTER 786**

**An act to add Section 1198 to the Harbors and Navigation Code, relating to vessels.**

[Approved by Governor September 27, 2000. Filed with Secretary of State September 27, 2000.]

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 1109, Burton. Vessels.**

Existing law provides that when a pilot for the Bays of San Francisco, San Pablo, and Suisun goes aboard a vessel, the pilot becomes a servant of the vessel and its owner and operator. Existing law also provides that nothing exempts the vessel or its owner or operator from liability to persons or property for damage or loss caused by the vessel or its operation on the ground that the vessel was piloted by a pilot or that the damage or loss was incurred as a result of the pilot's error, omission, fault, or neglect.

This bill would prohibit the rates and charges for pilotage services from including the cost of primary marine insurance, except as specified in the bill. The bill would require a pilot for the Bays of San Francisco, San Pablo, and Suisun to arrange to have available, upon written notice, trip insurance, with specified coverage limits, naming as insureds the pilot, any organization to which the pilot belongs, and their officers and employees, that insures the named insureds against any civil claim relating to acts or omissions of the insureds in connection with providing pilotage services, except willful misconduct.

The bill would require a vessel or its owner, operator, or demise or bareboat charterer hiring a pilot for the Bays of San Francisco, San Pablo, and Suisun to either pay for trip insurance, as specified, or to defend, indemnify, and hold harmless a pilot and any organization of pilots to which the pilot belongs, and their employees and officers, from specified liability resulting from an act, omission, or negligence of the pilot, other than willful misconduct, and to defend the pilot, as specified.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 1198 is added to the Harbors and Navigation Code, to read:

1198. (a) Except as provided in subdivision (c), the rates and charges for pilotage services shall not include the cost of primary marine insurance insuring a pilot, an organization of pilots, or their

officers or employees, from liability arising from negligence or errors in judgment in connection with the provision of pilotage service by pilots, organizations of pilots, or their officers or employees.

(b) A pilot who holds a state license for the Bays of San Francisco, San Pablo, and Suisun shall arrange to have available, upon advance written notice, trip insurance, with coverage limits of thirty-six million dollars (\$36,000,000), naming as insureds the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, and insuring the named insureds against any civil claim, demand, suit, or action by whomsoever asserted, arising out of, or relating to, directly or indirectly, acts or omissions of the insureds in connection with the provision of pilotage service, except willful misconduct.

(c) Every vessel, owner, operator, or demise or bareboat charterer hiring a pilot with a state license for the Bays of San Francisco, San Pablo, and Suisun shall either defend, indemnify, and hold harmless pilots pursuant to paragraph (1), or alternatively, notify pilots of an intent to pay for trip insurance pursuant to paragraph (2). If a vessel or its owner, operator, or demise or bareboat charterer does not provide written notice pursuant to paragraph (2) of an intent to exercise the trip insurance option, then the vessel and its owner, operator, and demise or bareboat charterer will be deemed to have elected the obligation to defend, indemnify, and hold harmless pilots pursuant to paragraph (1).

(1) (A) Except for a vessel electing trip insurance pursuant to paragraph (2), a vessel subject to this subdivision, and its owner, operator, demise or bareboat charterer, and agent shall not assert any claim, demand, suit, or action against the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, for damages, including any rights over, arising out of, or connected with, directly or indirectly, any damage, loss, or expense sustained by the vessel, its owners, agents, demise or bareboat charterers, operators, or crew, or by any third parties, even if the damage results, in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

(B) A vessel subject to this paragraph and its owner, operator, and demise or bareboat charterer shall defend, indemnify, and hold harmless the pilot, any organization of pilots to which the pilot belongs, and their officers and employees, with respect to liability arising from any claim, suit, or action, by whomsoever asserted, resulting in whole, or in part, from any act, omission, or negligence of the pilot, any organization of pilots to which the pilot belongs, and their officers and employees. The obligation to indemnify under this paragraph shall not apply to the extent that it causes the amount recoverable from a vessel, its owner, operator, or demise or bareboat charterer to exceed the limits of liability to which it is entitled under

any bill of lading, charter party, contract of affreightment, or provision of law.

(C) The prohibition on claims by vessels, owners, operators, demise or bareboat charterers, and agents imposed by subparagraph (A) and the obligation to defend, indemnify, and hold harmless the pilot imposed by subparagraph (B) shall not apply in cases of willful misconduct by a pilot, any organization of pilots to which the pilot belongs, and their officers and employees.

(D) A pilot who is the prevailing party shall be awarded attorney's fees and costs incurred in any action to enforce a right to indemnification provided pursuant to this subdivision.

(2) In lieu of paragraph (1), a vessel subject to this subdivision and its owner, operator, demise or bareboat charterer, and agent may elect to notify the pilot, or the organization of pilots to which the pilot belongs, of intent to pay for trip insurance, as described in subdivision (b). If notice of this election is received, in writing, by the pilot, or the organization of pilots to which the pilot belongs, at least 24 hours prior to the time pilotage services are requested, the vessel, and its owner, operator, demise or bareboat charterer, and agent are not subject to the requirements of paragraph (1). The pilot shall take all steps necessary to have trip insurance coverage in place during the vessel movement for which it is requested. The pilot shall assess to the vessel the premium for the trip insurance at the pilot's cost, in addition to any other applicable rates and charges for the pilotage services provided.

(d) Nothing in this section is intended to limit, alter, or diminish the liability of a vessel, owner, operator, or demise or bareboat charterer to any person who sustains loss or damage.