

Survey of Oregon’s and Washington’s Pilot Trainee Liability and Training Program Provisions

	BOPC	Oregon Board of Maritime Pilots	Washington State Board of Pilotage Commissioners
Trainee Liability Provision?	None	Yes, §§ 776.510 - 540	Yes, § 88.16.118, but WA does not indemnify trainees
Trainee License?	None	Yes, § 776.300, required to start training, like a learner’s permit	Yes, § 88.16.090, similar basic requirements as pilot licenses, issued after exam
Training Overseen by Board?	Yes, via PEC	No, overseen by licensed organizations of pilots, § 776.311, a member from each is on the OR Board	Yes, WA has an advisory Training Evaluation Committee overseeing training, and pilots can supervise training six months after licensure and after taking Train-the-Trainer course
Trainee Indemnification/ Bond Requirement?	In Trainee Contract, trainees agree to indemnify the Board (section 21)	Yes, § 776.540, but ED said neither OR nor the trainees indemnify one another	None
Are trainees employees of the State?	No, independent contractors with stipends paid by BOPC, but provided workers’ compensation insurance	No, managed and trained by pilotage organizations	No, trainees are independent contractors and receive monthly stipends from WA

Oregon’s Trainee Liability Provisions:

776.510 Declaration of legislative intent relating to liability of licensees, trainees and organizations.

(1) The stimulation and preservation of maritime commerce on the bar and river pilotage grounds of this state are declared to be affected with the public interest and the limitation and regulation of liability of licensees, trainees and organizations of pilots are necessary to such stimulation and preservation of maritime commerce and are deemed to be in the public interest.

(2) To accomplish the stimulation and preservation of maritime commerce it is necessary to establish an optional rate system whereby **vessels and persons engaging the services of a licensee have the option of:**

(a) Agreeing not to assert any personal liability against any licensee, trainee and organization of pilots to which the licensee or trainee belongs, and to defend, indemnify and save harmless the licensee, trainee and organization of pilots against all claims and demands arising from acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel; or

(b) Directing licensees in writing and in sufficient time for insurance to be procured by them, on a “trip” basis, insuring such licensees, trainees and organizations of pilots to which they belong against all claims or demands arising from or relating to, directly or indirectly, pilotage of the vessel, the premium or cost of such insurance to be included in the charges for pilotage services and paid on demand by the vessel.

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776.520 Tariffs limiting liability of licensees, trainees or organizations.

Licensees and trainees are authorized to limit their liability and the liability of any organization of pilots to which they belong by tariffs approved by the Oregon Board of Maritime Pilots containing substantially the terms and provisions of the following form:

The provisions of ORS 776.510 and 776.540 hereby are incorporated into and made a part of this tariff. By reason of the option granted by ORS 776.510, the rates and charges named in this tariff do not include the cost of marine insurance insuring the licensee, trainee and any organization of pilots to which the licensee or trainee belongs, the vessel, its owners, agents or operators from the consequences of negligence or errors in judgment of the licensees, trainees or organizations of pilots.

However, upon reasonable notice to the licensees in writing from the vessel, its master, owners, agents or operators, the licensees parties hereto will procure such insurance on a "trip" basis in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between the licensees and the vessel, its master, owners, agents or operators, insuring the licensees and the organizations of pilots to which they belong against all claims or demands arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified herein.

The election of the vessel, its master, owners, agents or operators not to request licensees parties hereto to procure such insurance and thereby to elect to have the licensees parties hereto perform services on the rates and charges specified herein shall constitute a binding and irrevocable agreement on the part of the vessel, its master, owners, agents or operators to the terms and conditions of the following:

It is understood and agreed, and is the essence of the contract under which services of the licensee are tendered to and accepted by the vessel, its master, operators and owners, that:

(1) The services rendered hereunder are rendered by a licensee;

(2) The services of any individual licensee have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510;

(3) Such services are advisory in nature only, the master of the vessel remaining at all times in full command of the vessel and empowered to relieve the licensee of duties;

(4) The services of the licensee and, if applicable, trainee are accepted on the express understanding that when the licensee and trainee go aboard the vessel the licensee and trainee become the servants of the vessel and its owners and operators.

Except as to such personal liability and rights over as may arise by reason of the willful misconduct or gross negligence of the licensee or trainee, the master, owners and operators of the vessel expressly covenant and agree:

(a) **Not to assert directly or indirectly, any personal liability against the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization;**

(b) Not to respond in damage (including any rights over) arising out of or connected with, directly or indirectly, any damage, loss or expense sustained by the vessel, its master, owners, operators and crew, and any third parties (including

cargo), even though resulting from acts or omissions of any organization of pilots to which the licensee or trainee belongs, from acts or omissions of its members, or any acts or omissions of the licensee or trainee; and

(c) To defend, indemnify and hold harmless the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization, from any claims whatsoever for damages, loss or expense arising out of, or connected with any acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel;

(5) The master, owners and operators of the vessel shall not be liable to indemnify and hold harmless the licensee, trainee and any organization of pilots to an extent greater than the amount to which the liability of the vessel, its owners and operators, is limited by reason of contract, bill of lading or statute, including but not limited to, the Limitation of Liability Act (46 U.S.C. 181-189), the Harter Act (46 U.S.C. 190-195), the Carriage of Goods by Sea Act (46 U.S.C. 1300-1315), and the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(6) The fees charged for the services rendered by the licensee and trainee have been computed and are assessed in accordance with and based upon the above stipulations.

776.530 Licensees, trainees and organizations not liable for certain acts or omissions.

An organization of pilots shall not be liable for any claims arising from acts or omissions of a licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of a vessel. **A licensee or trainee shall not be liable either directly or as a member or associate of an organization of pilots for any claims arising from acts or omissions of any other licensee, trainee or any organization of pilots which relate, directly or indirectly, to pilotage of a vessel.** This section does not apply to acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted.

776.540 Security required of licensees and trainees; conditions of bond; limitation of liability.

(1) Each licensee and trainee shall procure and furnish to the Oregon Board of Maritime Pilots a security in the sum of \$250 as a surety bond or an irrevocable letter of credit, in a form approved by the board and underwritten by a surety company authorized to engage in business in the State of Oregon or issued by an insured institution, as defined in ORS 706.008, or as a cash

deposit in a form approved by the board. The cash deposit, letter of credit or bond shall be conditioned so as to pay the sum to any person, firm, corporation or other legal entity who or which shall suffer any loss or damage by reason of any negligent act or omission of the licensee or trainee which relates, directly or indirectly, to pilotage of the vessel. **No licensee or trainee shall be liable for any such act or omission beyond the amount of the security.** However, this limitation of liability shall not apply:

(a) To willful misconduct on the part of the licensee or trainee;

(b) To the extent to which insurance is procured pursuant to the option granted by ORS 776.510 and 776.520; or

(c) To acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted.

(2) When any suit or action is brought in any court against a licensee or trainee for any such act or omission in respect of which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, upon payment by the licensee or trainee of the amount of the security into the court in which such suit or action is brought, the court shall distribute that amount rateably among the several claimants and shall dismiss the proceedings as to the licensee or trainee.

Washington's Trainee Liability Provisions:

RCW 88.16.118 - Limited liability of pilots and pilot trainees—Liability of vessel, owner, or operator not limited.

(1) (a) A pilot licensed to act as such by the state of Washington, and any countywide port district located partly or entirely within the Grays Harbor pilotage district as defined by RCW 88.16.050(2) authorized to provide pilotage services with pilots employed by or under contract with the port district, shall not be liable for damages in excess of the amount of five thousand dollars for damages or loss occasioned by a pilot's or pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of the pilot.

(b) A pilot trainee licensed to act as such by the state of Washington is not liable for damages in excess of the amount of five thousand dollars for

damages or loss occasioned by the pilot trainee's errors, omissions, fault, or neglect in the performance of pilotage or pilot training services, except as may arise by reason of the willful misconduct or gross negligence of the pilot trainee.

(2) When a pilot or pilot trainee boards a vessel to provide pilotage services, that pilot or pilot trainee becomes a servant of the vessel and its owner and operator. **Nothing in this section exempts the vessel, its owner, or its operator from liability for damage or loss occasioned by that ship to a person or property on the ground that (a) the ship was piloted by a Washington state licensed pilot or pilot trainee, or (b) the damage or loss was occasioned by the error, omission, fault, or neglect of a Washington state licensed pilot or pilot trainee.**

(3) Pilots, pilot trainees, and board members are immune from civil liability to any party for damages or other relief that is in any way based on the communication of, to a pilot or pilot trainee, to the board, or to any other appropriate governmental authority or person, any of the following: (a)

Information about any incident or occurrence involving collision, allision, or grounding of any vessel, including near-miss occurrences; (b) information about any other marine occurrence that the pilot or pilot trainee believes involved or involves undue risk in the navigation of any vessel that could result in damage to any person, vessel, structure, aid to navigation, or the marine environment of this state; or (c) any report or other written, oral, or electronic evaluation of the performance of any pilot or pilot trainee.

"Performance" includes, but is not limited to, professional ability, attitude, performance of duties, effort, knowledge, skills, and other relevant factors. This protection and immunity does not apply when a pilot or pilot trainee intentionally releases or discloses information known to be false. The immunity granted to a person under this section is in addition to any common law or statutory privilege or immunity enjoyed by the person, and this section is not intended to abrogate or modify any such common law or statutory privilege or immunity. The immunity from civil liability provided under this section shall be liberally construed to accomplish the purposes of this chapter and to encourage the free flow of information and opinions to the board.

Section 21 of BOPC Trainee Contract:

21. INDEMNIFICATION – The Trainee agrees to indemnify, defend, and save harmless the Board, the State of California, and their officers, agents, and employees from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Trainee in the performance of this Agreement.

Proposed Revisions to Harbors and Navigation Code section 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, **or a pilot trainee**, 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, **or pilot trainees**.

(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 **and pilot trainees** 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 **and pilot trainees** 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, **or any pilot trainee**, 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, **or any pilot trainee**.

(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, **and any pilot trainee**, 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, **and any pilot trainee**. 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 **and pilot trainee** 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, **or any pilot trainee**.

(D) A pilot **and/or pilot trainee** 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.