

Committee Substitute for
Committee Substitute for Senate Bill No. 1616

An act relating to seaport security; amending s. 311.12, F.S., relating to seaport security standards; authorizing the Department of Law Enforcement to exempt an inactive seaport from certain requirements; revising circumstances under which employment by or access to a seaport may be denied; providing additional offenses that disqualify a person from employment within or regular access to a seaport or restricted access area; prohibiting a seaport from imposing access restrictions that exceed the statewide minimum requirements; creating s. 311.125, F.S.; establishing the Uniform Port Access Credential System, to be administered by the Department of Highway Safety and Motor Vehicles; requiring seaports that are subject to statewide minimum security standards to comply with the system's requirements by a specified date; specifying system requirements; providing requirements for the Uniform Port Access Credential Card; requiring an initial fingerprint-based criminal history check of card applicants; requiring additional criminal history checks; requiring employers to notify a seaport if an employee having access is terminated, resigns, is incapacitated, or dies; providing a procedure for placing a card in an inactive status; providing for reactivation of a card; authorizing revocation of a business entity's access to a seaport upon failure to report a change in the work status of an employee; providing requirements for access to restricted areas within a seaport; providing requirements for a visitor's pass to be issued by seaports; authorizing seaports to charge for the cost of conducting criminal history checks and issuing the Uniform Port Access Credential Card; providing for seizure of a Uniform Port Access Credential Card by a law enforcement officer under certain circumstances; providing a timeframe for seaports to comply with the requirements of the act; requiring the Department of Law Enforcement to update a seaport security compliance plan; providing that implementation is contingent on the receipt of federal grant funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 311.12, Florida Statutes, is amended to read:

311.12 Seaport security standards.—

(1)(a) The statewide minimum standards for seaport security for each seaport identified in s. 311.09 shall be those based upon the Florida Seaport Security Assessment 2000 and set forth in the "Port Security Standards—Compliance Plan" delivered to the Speaker of the House of Representatives and the President of the Senate on December 11, 2000, pursuant to this section. The statewide minimum standards are hereby adopted. The Office of Drug Control within the Executive Office of the Governor shall maintain

a sufficient number of copies of the standards for use of the public, at its offices, and shall provide copies to each affected seaport upon request.

(b) The Department of Law Enforcement may exempt any seaport identified in s. 311.09 from all or part of the requirements of subsections (1) through (5) if the department determines that the seaport is not active. The department shall periodically review exempted seaports to determine if there is maritime activity at the seaport. A change in status from inactive to active may warrant removal of all or part of any exemption provided by the department.

(2) Each seaport identified in s. 311.09 shall maintain a security plan relating to the specific and identifiable needs of the seaport which assures that the seaport is in substantial compliance with the statewide minimum standards established pursuant to subsection (1). Each plan adopted or revised pursuant to this subsection must be reviewed and approved by the Office of Drug Control and the Department of Law Enforcement. All such seaports shall allow unimpeded access by the Department of Law Enforcement to the affected facilities for purposes of inspections or other operations authorized by this section. Each seaport security plan may establish restricted access areas within the seaport consistent with the requirements of the statewide minimum standards. In such cases, a Uniform Port Access Credential Card, authorizing restricted-area access, ~~Restricted Access Area Permit~~ shall be required for any individual working within or authorized to regularly enter a restricted access area and the requirements in subsection (3) relating to criminal history checks and employment restrictions shall be applicable only to employees or other persons working within or authorized to regularly enter a restricted access area. Every seaport security plan shall set forth the conditions and restrictions to be imposed upon others visiting the port or any restricted access area sufficient to provide substantial compliance with the statewide minimum standards.

(3)(a) A fingerprint-based criminal history check shall be performed on any applicant for employment, every current employee, and other persons as designated pursuant to the seaport security plan for each seaport. The criminal history check shall be performed in connection with employment within or other authorized regular access to a restricted access area or the entire seaport if the seaport security plan does not designate one or more restricted access areas. With respect to employees or others with regular access, such checks shall be performed at least once every 5 years or at other more frequent intervals as provided by the seaport security plan. Each individual subject to the background criminal history check shall file a complete set of fingerprints taken in a manner required by the Department of Law Enforcement and the seaport security plan. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The results of each fingerprint-based check shall be reported to the requesting seaport. The costs of the checks, consistent with s. 943.053(3), shall be paid by the seaport or other employing entity or by the person checked.

(b) By January 1, 2002, each seaport security plan shall identify criminal convictions or other criminal history factors consistent with paragraph (c)

which shall disqualify a person from either initial seaport employment or new authorization for regular access to seaport property or to a restricted access area. Such factors shall be used to disqualify all applicants for employment or others seeking regular access to the seaport or restricted access area on or after January 1, 2002, and may be used to disqualify all those employed or authorized for regular access on that date. Each seaport security plan may establish a procedure to appeal a denial of employment or access based upon procedural inaccuracies or discrepancies regarding criminal history factors established pursuant to this paragraph. ~~The appeal procedure may allow the granting of waivers or conditional employment or access.~~ In addition, A seaport may allow waivers on a temporary basis to meet special or emergency needs of the seaport or its users. Policies, procedures, and criteria for implementation of this subsection shall be included in the seaport security plan. All waivers granted pursuant to this paragraph must be reported to the Department of Law Enforcement within 30 days of issuance.

(c) In addition to other requirements for employment or access established by each seaport pursuant to its seaport security plan, each seaport security plan shall provide that:

1. Any person who has within the past 7 ~~5~~ years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to a seaport or restricted access area; and

2. Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to a seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 ~~5~~ years prior to the employment or access date under consideration.

(d) By October 1 of each year, each seaport shall report to the Department of Law Enforcement each determination of denial of employment or access, and any determination to authorize employment or access after an appeal of a denial made during the previous 12 months. The report shall include the identity of the individual affected, the factors supporting the determination, ~~any special condition imposed,~~ and any other material factors used in making the determination.

(4)(a) Subject to the provisions of subsection (6), each affected seaport shall begin to implement its security plan developed under this section by July 1, 2001.

(b) The Office of Drug Control and the Department of Law Enforcement may modify or waive any physical facility or other requirement contained in the statewide minimum standards for seaport security upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver. Such modifications or waivers shall be noted in the annual report submitted by the Department of Law Enforcement pursuant to this subsection.

(c) Beginning with the 2001-2002 fiscal year, the Department of Law Enforcement, or any entity designated by the department, shall conduct no less than one annual unannounced inspection of each seaport listed in s. 311.09 to determine whether the seaport is meeting the minimum standards established pursuant to this section, and to identify seaport security changes or improvements necessary or otherwise recommended. The Department of Law Enforcement, or any entity designated by the department, may conduct additional announced or unannounced inspections or operations within or affecting any affected seaport to test compliance with, or the effectiveness of, security plans and operations at each seaport, to determine compliance with physical facility requirements and standards, or to assist the department in identifying changes or improvements necessary to bring a seaport into compliance with the statewide minimum security standards.

(d) By December 31, 2001, and annually thereafter, the Department of Law Enforcement, in consultation with the Office of Drug Control, shall complete a report indicating the observations and findings of all inspections or operations conducted during the year and any recommendations developed by reason of such inspections. A copy of the report shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chief administrator of each seaport inspected. The report shall include responses from the chief administrator of any seaport indicating what actions, if any, have been taken or are planned to be taken in response to the recommendations, observations, and findings reported by the department.

(e) In making security project or other funding decisions applicable to each seaport listed in s. 311.09, the Legislature may consider as authoritative the annual report of the Department of Law Enforcement required by this section, especially regarding each seaport's degree of substantial compliance with the statewide minimum security standards established by this section.

(5) Nothing in this section shall be construed as preventing any seaport from implementing security measures that are more stringent, greater than, or supplemental to the statewide minimum standards established by this section except that, for purposes of employment and access, each seaport shall adhere to the requirements provided in paragraph (3)(c) and shall not exceed statewide minimum requirements.

(6) When funds are appropriated for seaport security, the Office of Drug Control and the Florida Seaport Transportation and Economic Development Council shall mutually determine the allocation of such funds for security project needs identified in the approved seaport security plans required by this section. Any seaport that receives state funds for security projects must enter into a joint participation agreement with the appropriate state entity and must use the seaport security plan developed pursuant to this section as the basis for the agreement. If funds are made available over more than one fiscal year, such agreement must reflect the entire scope of the project approved in the security plan and, as practicable, allow for reimbursement for authorized projects over more than 1 year. The joint participation agreement may include specific timeframes for completion of a security project and the applicable funding reimbursement dates. The joint participation agreement may also require a contractual penalty, not to exceed \$1,000 per day, to be imposed for failure to meet project completion dates provided state funding is available. Any such penalty shall be deposited into the State Transportation Trust Fund to be used for seaport security operations and capital improvements.

Section 2. Section 311.125, Florida Statutes, is created to read:

311.125 Uniform Port Access Credential System.—

(1) By July 1, 2004, each seaport identified in s. 311.09 and subject to the statewide minimum seaport security standards set forth in s. 311.12 shall be required to use a Uniform Port Access Credential Card that is to be utilized in the operation of the state Uniform Port Access Credential System as required herein. All Uniform Port Access Credential Cards shall be issued by the Department of Highway Safety and Motor Vehicles to the designated port authority, or recognized governing board, of the requesting seaport for distribution to the credential applicant.

(2)(a) The Department of Highway Safety and Motor Vehicles, in consultation with the Department of Law Enforcement, the Florida Seaport Transportation and Economic Development Council, the Florida Trucking Association, and the United States Transportation and Security Administration shall develop a Uniform Port Access Credential System for use in on-site verification of access authority for all persons on a seaport as defined in s. 311.12(2), utilizing the Uniform Port Access Credential Card as authorized herein. Each seaport, in a manner consistent with the "Port Security Standards Compliance Plan" delivered to the Speaker of the House of Representatives and the President of the Senate on December 11, 2000, pursuant to s. 311.12, and this section, is responsible for granting, restricting, or modifying access authority provided to each Uniform Port Access Credential Card holder and promptly communicating the levels of access or changes in the level of access to the department for its use in administering the Uniform Port Access Credential System. Each seaport is responsible for the proper operation and maintenance of the Uniform Port Access Credential Card reader and access verification utilizing the Uniform Port Access Credential System at its location. The Uniform Port Access Credential Card reader and Uniform Port Access Credential System shall be utilized by each seaport to ensure compliance with the access restrictions provided by s. 311.12.

(b) The system shall be designed to conform, as closely as possible, with criteria established by the United States Transportation Security Administration for a Transportation Worker Identification Card, or similar identification, as required by federal law. The system shall, at a minimum, consist of:

1. A centralized, secure database for collecting and maintaining fingerprints and other biometric means of identity, and other information pertaining to personal identification of persons working on, or doing business at, a Florida seaport as set forth in s. 311.12;

2. A methodology for receiving data from each port and transmitting data to each port regarding access permissions;

3. Technology required for each gate and portal at each seaport to be interactive with the Uniform Port Access Credential System during all hours of operation;

4. The ability to identify persons who have violated the access requirements of s. 311.12 and to deactivate the access permissions of those persons; and

5. The ability to utilize the Uniform Port Access Credential Card in a manner consistent herein.

Such system shall be designed to ensure the credentialed cardholders' privacy in a manner consistent with the state's security requirements as provided herein.

(3) The Uniform Port Access Credential Card must include at a minimum a digital full-face photograph, a digital fingerprint, a multilayered security process, a two-dimensional barcode with technology specifications that will allow the unique biometric identifiers to reside in the barcode, a unique identifying code or number, scanning capability to compare required identifiers with information on file in the central database, and background color differentials for visual identification of access permissions.

(4) A fingerprint-based criminal history check shall be performed on an applicant for a Uniform Port Access Credential Card as provided in s. 311.12(3). Based upon review of the criminal history check, each seaport may determine the specific access permissions that will be granted to that applicant. Upon receipt of a port authority "Notification of Access Permission" form and a verification of the criminal history check, the department shall issue a Uniform Port Access Credential Card to the port authority for distribution to the applicant.

(5) A Uniform Port Access Credential Card is valid for 4 years following the date of issuance. Criminal history checks may be performed on a random basis, but at least once a year, during the period that such credential card is active to ensure that the credential holder complies with the requirements for access to restricted areas provided in s. 311.12(3). Failure to complete any part of the required credential application process, or failure to comply with the criminal history clearances, shall be grounds for immediate denial

of access. In addition to access authority granted to seaports, access authority may be restricted or revoked by the Department of Highway Safety and Motor Vehicles or the Department of Law Enforcement if the cardholder is suspected of criminal violations that could affect the security of a port or that otherwise render the cardholder ineligible for port access, upon suspicion that the person in possession of the card is using it, or attempting to use it, fraudulently, or if restriction or revocation is done to assure the security of any port or portion thereof.

(6) Corporations, persons, or other business entities that employ persons to work on, or do business at, seaports regulated in s. 311.12 shall notify those seaports for which those employees have access permissions in the event of the employee's termination, resignation, work-related incapacitation, or death. Uniform Port Access Credential Card accesses for persons not currently employed to perform a job on a seaport shall be placed in an inactive status. Upon notification of a work status change, the port authority, or recognized governing board, shall notify the department to have the credential card placed in an inactive status. Inactive status shall continue until the expiration of the credential card or reactivation of the card by petition. The former employee may have the credential card reactivated by petitioning a seaport. The port authority, or recognized governing board, of any seaport may determine that the individual is employed by another appropriate entity or is self-employed for purposes of performing work on the seaport. Upon that determination, the port authority, or recognized governing board, may request reactivation of credentialing permissions. All such cards may be restricted or revoked as provided in subsection (5).

(7) Failure to report a change in work status, as defined in this section, within 7 days after the action may result in revocation of the business entity's access to the seaport.

(8) Each person working on a seaport, as regulated in s. 311.12(2), shall be issued a Uniform Port Access Credential Card upon completion of the application process. Upon issuance of the Uniform Port Access Credential Card, the cardholder is eligible to enter a seaport in the system based on the level of permission allowed by each respective seaport. A person working in a restricted access area must meet the requirements of s. 311.12(3). The Uniform Port Access Credential Card shall be clearly marked for visual verification of the cardholder's permission for access to a restricted area, pursuant to subsection (3). The card must contain biometric verification of the cardholder's identity and proper access permissions. Entrance to a restricted access area, as defined in s. 311.12(2), shall require a machine check and fingerprint verification of each person's Uniform Port Access Credential Card for proper identification. Exit from any restricted access area of a seaport shall require a machine check of the credential card.

(9) Each person not producing a Uniform Port Access Credential Card upon arrival at a restricted area of a seaport must, at a minimum, stop at a check point, show valid identification, and receive a visitor's pass in order to proceed. The visitor's pass must be plainly displayed on the person of the visitor or in the windshield of the vehicle and designate what area of the seaport may be accessed by the visitor. Failure to display the visitor's pass

shall result in revocation of a worker's permission to work on the seaport. Public conveyances such as buses carrying passengers into restricted access areas must be able to verify that all passengers have legitimate business on the seaport. Procedures for implementation of this process is the responsibility of each seaport.

(10) The price of a Uniform Port Access Credential Card shall be set by the department and shall reflect the cost of the required criminal history checks, including the cost of the initial state and federal fingerprint check and the annual criminal history check and the cost of production and issuance of the card by the department. Seaports may charge an additional administrative fee to cover the costs of issuing credentials to its employees and persons doing business at the seaport.

(11) Each Uniform Port Access Credential Card remains the property of the State of Florida. Any person possessing such a card shall provide it to any law enforcement officer upon request. A law enforcement officer having reasonable suspicion to believe that a card is possessed or is being used in violation of law or the standards provided by this section, or in any other manner that raises a concern about the safety and security of a seaport, may seize the card. A cardholder has no cause of action against any law enforcement officer who seizes a Uniform Port Access Credential Card.

(12) Each seaport defined in s. 311.09 and required to meet the minimum security standards set forth in s. 311.12 shall comply with technology improvement requirements for the activation of the Uniform Port Access Credential System no later than July 1, 2004. Equipment and technology requirements for the system shall be specified by the department no later than July 1, 2003. The system shall be implemented at the earliest possible time that all seaports have active technology in place, but no later than July 1, 2004.

(13) The "Port Security Standards Compliance Plan" delivered to the Speaker of the House of Representatives and the President of the Senate on December 11, 2000, pursuant to s. 311.12, shall be updated by the Department of Law Enforcement to reflect the changes made by this act.

(14) This section shall be contingent on the receipt of the federal grant funds necessary to implement the Uniform Port Access Credential System.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 4, 2003.

Filed in Office Secretary of State June 4, 2003.