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2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1  
2 An act relating to seaport security; amending  
3 s. 311.12, F.S., relating to seaport security  
4 standards; authorizing the Department of Law  
5 Enforcement to exempt an inactive seaport from  
6 certain requirements; revising circumstances  
7 under which employment by or access to a  
8 seaport may be denied; providing additional  
9 offenses that disqualify a person from  
10 employment within or regular access to a  
11 seaport or restricted access area; prohibiting  
12 a seaport from imposing access restrictions  
13 that exceed the statewide minimum requirements;  
14 creating s. 311.125, F.S.; establishing the  
15 Uniform Port Access Credential System, to be  
16 administered by the Department of Highway  
17 Safety and Motor Vehicles; requiring seaports  
18 that are subject to statewide minimum security  
19 standards to comply with the system's  
20 requirements by a specified date; specifying  
21 system requirements; providing requirements for  
22 the Uniform Port Access Credential Card;  
23 requiring an initial fingerprint-based criminal  
24 history check of card applicants; requiring  
25 additional criminal history checks; requiring  
26 employers to notify a seaport if an employee  
27 having access is terminated, resigns, is  
28 incapacitated, or dies; providing a procedure  
29 for placing a card in an inactive status;  
30 providing for reactivation of a card;  
31 authorizing revocation of a business entity's

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 access to a seaport upon failure to report a  
2 change in the work status of an employee;  
3 providing requirements for access to restricted  
4 areas within a seaport; providing requirements  
5 for a visitor's pass to be issued by seaports;  
6 authorizing seaports to charge for the cost of  
7 conducting criminal history checks and issuing  
8 the Uniform Port Access Credential Card;  
9 providing for seizure of a Uniform Port Access  
10 Credential Card by a law enforcement officer  
11 under certain circumstances; providing a  
12 timeframe for seaports to comply with the  
13 requirements of the act; requiring the  
14 Department of Law Enforcement to update a  
15 seaport security compliance plan; providing  
16 that implementation is contingent on the  
17 receipt of federal grant funds; providing an  
18 effective date.

19

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

21

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

24 311.12 Seaport security standards.--

25 (1)(a) The statewide minimum standards for seaport  
26 security for each seaport identified in s. 311.09 shall be  
27 those based upon the Florida Seaport Security Assessment 2000  
28 and set forth in the "Port Security Standards--Compliance  
29 Plan" delivered to the Speaker of the House of Representatives  
30 and the President of the Senate on December 11, 2000, pursuant  
31 to this section. The statewide minimum standards are hereby

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 adopted. The Office of Drug Control within the Executive  
2 Office of the Governor shall maintain a sufficient number of  
3 copies of the standards for use of the public, at its offices,  
4 and shall provide copies to each affected seaport upon  
5 request.

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

14 (2) Each seaport identified in s. 311.09 shall  
15 maintain a security plan relating to the specific and  
16 identifiable needs of the seaport which assures that the  
17 seaport is in substantial compliance with the statewide  
18 minimum standards established pursuant to subsection (1). Each  
19 plan adopted or revised pursuant to this subsection must be  
20 reviewed and approved by the Office of Drug Control and the  
21 Department of Law Enforcement. All such seaports shall allow  
22 unimpeded access by the Department of Law Enforcement to the  
23 affected facilities for purposes of inspections or other  
24 operations authorized by this section. Each seaport security  
25 plan may establish restricted access areas within the seaport  
26 consistent with the requirements of the statewide minimum  
27 standards. In such cases, a Uniform Port Access Credential  
28 Card, authorizing restricted-area access,~~Restricted Access~~  
29 ~~Area Permit~~ shall be required for any individual working  
30 within or authorized to regularly enter a restricted access  
31 area and the requirements in subsection (3) relating to

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 criminal history checks and employment restrictions shall be  
2 applicable only to employees or other persons working within  
3 or authorized to regularly enter a restricted access area.  
4 Every seaport security plan shall set forth the conditions and  
5 restrictions to be imposed upon others visiting the port or  
6 any restricted access area sufficient to provide substantial  
7 compliance with the statewide minimum standards.

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

30 (b) By January 1, 2002, each seaport security plan  
31 shall identify criminal convictions or other criminal history

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

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

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

24 1. Any person who has within the past 7 5 years been  
25 convicted, regardless of whether adjudication was withheld,  
26 for a forcible felony as defined in s. 776.08; an act of  
27 terrorism as defined in s. 775.30; planting of a hoax bomb as  
28 provided in s. 790.165; any violation involving the  
29 manufacture, possession, sale, delivery, display, use, or  
30 attempted or threatened use of a weapon of mass destruction or  
31 hoax weapon of mass destruction as provided in s. 790.166;

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 dealing in stolen property; any violation of s. 893.135; any  
2 violation involving the sale, manufacturing, delivery, or  
3 possession with intent to sell, manufacture, or deliver a  
4 controlled substance; burglary; robbery; any felony violation  
5 of s. 812.014; any violation of s. 790.07; any crime an  
6 element of which includes use or possession of a firearm; any  
7 conviction for any similar offenses under the laws of another  
8 jurisdiction; or conviction for conspiracy to commit any of  
9 the listed offenses shall not be qualified for initial  
10 employment within or regular access to a seaport or restricted  
11 access area; and

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

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

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ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

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

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

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

30 (d) By December 31, 2001, and annually thereafter, the  
31 Department of Law Enforcement, in consultation with the Office

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 of Drug Control, shall complete a report indicating the  
2 observations and findings of all inspections or operations  
3 conducted during the year and any recommendations developed by  
4 reason of such inspections. A copy of the report shall be  
5 provided to the Governor, the President of the Senate, the  
6 Speaker of the House of Representatives, and the chief  
7 administrator of each seaport inspected. The report shall  
8 include responses from the chief administrator of any seaport  
9 indicating what actions, if any, have been taken or are  
10 planned to be taken in response to the recommendations,  
11 observations, and findings reported by the department.

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

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

26 (6) When funds are appropriated for seaport security,  
27 the Office of Drug Control and the Florida Seaport  
28 Transportation and Economic Development Council shall mutually  
29 determine the allocation of such funds for security project  
30 needs identified in the approved seaport security plans  
31 required by this section. Any seaport that receives state



ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 funds for security projects must enter into a joint  
2 participation agreement with the appropriate state entity and  
3 must use the seaport security plan developed pursuant to this  
4 section as the basis for the agreement. If funds are made  
5 available over more than one fiscal year, such agreement must  
6 reflect the entire scope of the project approved in the  
7 security plan and, as practicable, allow for reimbursement for  
8 authorized projects over more than 1 year. The joint  
9 participation agreement may include specific timeframes for  
10 completion of a security project and the applicable funding  
11 reimbursement dates. The joint participation agreement may  
12 also require a contractual penalty, not to exceed \$1,000 per  
13 day, to be imposed for failure to meet project completion  
14 dates provided state funding is available. Any such penalty  
15 shall be deposited into the State Transportation Trust Fund to  
16 be used for seaport security operations and capital  
17 improvements.

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

20 311.125 Uniform Port Access Credential System.--  
21 (1) By July 1, 2004, each seaport identified in s.  
22 311.09 and subject to the statewide minimum seaport security  
23 standards set forth in s. 311.12 shall be required to use a  
24 Uniform Port Access Credential Card that is to be utilized in  
25 the operation of the state Uniform Port Access Credential  
26 System as required herein. All Uniform Port Access Credential  
27 Cards shall be issued by the Department of Highway Safety and  
28 Motor Vehicles to the designated port authority, or recognized  
29 governing board, of the requesting seaport for distribution to  
30 the credential applicant.

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ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1           (2)(a) The Department of Highway Safety and Motor  
2 Vehicles, in consultation with the Department of Law  
3 Enforcement, the Florida Seaport Transportation and Economic  
4 Development Council, the Florida Trucking Association, and the  
5 United States Transportation and Security Administration shall  
6 develop a Uniform Port Access Credential System for use in  
7 on-site verification of access authority for all persons on a  
8 seaport as defined in s. 311.12(2), utilizing the Uniform Port  
9 Access Credential Card as authorized herein. Each seaport, in  
10 a manner consistent with the "Port Security Standards  
11 Compliance Plan" delivered to the Speaker of the House of  
12 Representatives and the President of the Senate on December  
13 11, 2000, pursuant to s. 311.12, and this section, is  
14 responsible for granting, restricting, or modifying access  
15 authority provided to each Uniform Port Access Credential Card  
16 holder and promptly communicating the levels of access or  
17 changes in the level of access to the department for its use  
18 in administering the Uniform Port Access Credential  
19 System. Each seaport is responsible for the proper operation  
20 and maintenance of the Uniform Port Access Credential Card  
21 reader and access verification utilizing the Uniform Port  
22 Access Credential System at its location. The Uniform Port  
23 Access Credential Card reader and Uniform Port Access  
24 Credential System shall be utilized by each seaport to ensure  
25 compliance with the access restrictions provided by s. 311.12.  
26           (b) The system shall be designed to conform, as  
27 closely as possible, with criteria established by the United  
28 States Transportation Security Administration for a  
29 Transportation Worker Identification Card, or similar  
30 identification, as required by federal law. The system shall,  
31 at a minimum, consist of:

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

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

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

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

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

16  
17 Such system shall be designed to ensure the credentialed  
18 cardholders' privacy in a manner consistent with the state's  
19 security requirements as provided herein.

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

29 (4) A fingerprint-based criminal history check shall  
30 be performed on an applicant for a Uniform Port Access  
31 Credential Card as provided in s. 311.12(3). Based upon review

1 of the criminal history check, each seaport may determine the  
2 specific access permissions that will be granted to that  
3 applicant. Upon receipt of a port authority "Notification of  
4 Access Permission" form and a verification of the criminal  
5 history check, the department shall issue a Uniform Port  
6 Access Credential Card to the port authority for distribution  
7 to the applicant.

8 (5) A Uniform Port Access Credential Card is valid for  
9 4 years following the date of issuance. Criminal history  
10 checks may be performed on a random basis, but at least once a  
11 year, during the period that such credential card is active to  
12 ensure that the credential holder complies with the  
13 requirements for access to restricted areas provided in s.  
14 311.12(3). Failure to complete any part of the required  
15 credential application process, or failure to comply with the  
16 criminal history clearances, shall be grounds for immediate  
17 denial of access. In addition to access authority granted to  
18 seaports, access authority may be restricted or revoked by the  
19 Department of Highway Safety and Motor Vehicles or the  
20 Department of Law Enforcement if the cardholder is suspected  
21 of criminal violations that could affect the security of a  
22 port or that otherwise render the cardholder ineligible for  
23 port access, upon suspicion that the person in possession of  
24 the card is using it, or attempting to use it, fraudulently,  
25 or if restriction or revocation is done to assure the security  
26 of any port or portion thereof.

27 (6) Corporations, persons, or other business entities  
28 that employ persons to work on, or do business at, seaports  
29 regulated in s. 311.12 shall notify those seaports for which  
30 those employees have access permissions in the event of the  
31 employee's termination, resignation, work-related

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 incapacitation, or death. Uniform Port Access Credential Card  
2 accesses for persons not currently employed to perform a job  
3 on a seaport shall be placed in an inactive status. Upon  
4 notification of a work status change, the port authority, or  
5 recognized governing board, shall notify the department to  
6 have the credential card placed in an inactive status.  
7 Inactive status shall continue until the expiration of the  
8 credential card or reactivation of the card by petition. The  
9 former employee may have the credential card reactivated by  
10 petitioning a seaport. The port authority, or recognized  
11 governing board, of any seaport may determine that the  
12 individual is employed by another appropriate entity or is  
13 self-employed for purposes of performing work on the seaport.  
14 Upon that determination, the port authority, or recognized  
15 governing board, may request reactivation of credentialing  
16 permissions. All such cards may be restricted or revoked as  
17 provided in subsection (5).

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

22 (8) Each person working on a seaport, as regulated in  
23 s. 311.12(2), shall be issued a Uniform Port Access Credential  
24 Card upon completion of the application process. Upon issuance  
25 of the Uniform Port Access Credential Card, the cardholder is  
26 eligible to enter a seaport in the system based on the level  
27 of permission allowed by each respective seaport. A person  
28 working in a restricted access area must meet the requirements  
29 of s. 311.12(3). The Uniform Port Access Credential Card shall  
30 be clearly marked for visual verification of the cardholder's  
31 permission for access to a restricted area, pursuant to

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

1 subsection (3). The card must contain biometric verification  
2 of the cardholder's identity and proper access  
3 permissions. Entrance to a restricted access area, as defined  
4 in s. 311.12(2), shall require a machine check and fingerprint  
5 verification of each person's Uniform Port Access Credential  
6 Card for proper identification. Exit from any restricted  
7 access area of a seaport shall require a machine check of the  
8 credential card.

9 (9) Each person not producing a Uniform Port Access  
10 Credential Card upon arrival at a restricted area of a seaport  
11 must, at a minimum, stop at a check point, show valid  
12 identification, and receive a visitor's pass in order to  
13 proceed. The visitor's pass must be plainly displayed on the  
14 person of the visitor or in the windshield of the vehicle and  
15 designate what area of the seaport may be accessed by the  
16 visitor. Failure to display the visitor's pass shall result in  
17 revocation of a worker's permission to work on the  
18 seaport. Public conveyances such as buses carrying passengers  
19 into restricted access areas must be able to verify that all  
20 passengers have legitimate business on the seaport. Procedures  
21 for implementation of this process is the responsibility of  
22 each seaport.

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

ENROLLED

2003 Legislature CS for CS for SB 1616, 2nd Engrossed (ntc)

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

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

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

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

28           Section 3. This act shall take effect upon becoming a  
29 law.  
30  
31