

By Senator Hill

1-1045-04

1 A bill to be entitled
2 An act relating to seaport security standards;
3 amending s. 311.12, F.S.; allowing the
4 Department of Law Enforcement to waive the
5 restriction that prohibits an individual who
6 has been convicted of a specified offense from
7 obtaining initial employment in or regular
8 access to a seaport or restricted access area;
9 providing procedures; providing duties of the
10 Parole Commission; exempting the waiver review
11 process from ch. 120, F.S.; providing an
12 effective date.

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

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16 Section 1. Subsection (3) of section 311.12, Florida
17 Statutes, is amended to read:

18 311.12 Seaport security standards.--

19 (3)(a) A fingerprint-based criminal history check
20 shall be performed on any applicant for employment, every
21 current employee, and other persons as designated pursuant to
22 the seaport security plan for each seaport. The criminal
23 history check shall be performed in connection with employment
24 within or other authorized regular access to a restricted
25 access area or the entire seaport if the seaport security plan
26 does not designate one or more restricted access areas. With
27 respect to employees or others with regular access, such
28 checks shall be performed at least once every 5 years or at
29 other more frequent intervals as provided by the seaport
30 security plan. Each individual subject to the background
31 criminal history check shall file a complete set of

1 fingerprints taken in a manner required by the Department of
2 Law Enforcement and the seaport security plan. Fingerprints
3 shall be submitted to the Department of Law Enforcement for
4 state processing and to the Federal Bureau of Investigation
5 for federal processing. The results of each fingerprint-based
6 check shall be reported to the requesting seaport. The costs
7 of the checks, consistent with s. 943.053(3), shall be paid by
8 the seaport or other employing entity or by the person
9 checked.

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

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

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

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

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

9 (e) The Department of Law Enforcement shall establish
10 a waiver process for authorizing an individual found to be
11 ineligible under paragraph (c) to have unescorted access to a
12 seaport or restricted access area. The consideration of
13 whether to grant a waiver may be based on the circumstances of
14 any disqualifying act or offense, any restitution made by the
15 individual, and other factors from which it may be determined
16 that the individual does not pose a risk of theft,
17 drug-trafficking, or terrorism to the public seaports
18 regulated under this chapter or to the residents of this
19 state. The waiver process shall begin when an individual who
20 has been denied initial employment within or regular,
21 unescorted access to restricted access areas on a public
22 seaport as described in paragraph (c) submits an
23 application-for-waiver form, along with a notarized letter or
24 affidavit from the individual's employer or union
25 representative, which states the mitigating reasons that
26 arguably justify a waiver. Within 6 months after receiving the
27 application, the administrative staff of the Parole Commission
28 shall conduct a factual review of the waiver application. The
29 Parole Commission shall transmit its findings of fact to the
30 Department of Law Enforcement for review and final disposition
31 of the waiver request. The Department of Law Enforcement shall

1 notify the applicant of the department's final action on the
2 waiver request. This review process is exempt from chapter
3 120.

4 Section 2. This act shall take effect July 1, 2004.

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7 SENATE SUMMARY

8 Allows the Department of Law Enforcement to waive the
9 restriction that prohibits an individual who has been
10 convicted of a specified offense from obtaining initial
11 employment in or regular access to a seaport or
12 restricted access area. Provides procedures for
13 initiating and ruling on the waiver. Provides duties of
14 the Parole Commission. Exempts the waiver review process
15 from ch. 120, F.S., the Administrative Procedure Act.

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