

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 2172

INTRODUCER: Criminal Justice Committee and Senator Crist

SUBJECT: Detention by Licensed Security Officers

DATE: April 13, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Earlywine	Cooper	CM	Favorable
3.			GO	
4.			JU	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS/SB 2172 allows security officers who are authorized to carry a firearm while on duty to temporarily detain and determine the identity of persons under suspicious circumstances on the licensee's client's premises. If it appears the person is armed with a firearm, concealed weapon or destructive device, the security officer may search the person and their belongings for the purpose of recovering the weapon. Detention is limited as to place and time. Law enforcement must be notified every time a detention occurs.

This CS substantially amends the following sections of the Florida Statutes: 493.6305 and 493.6118.

II. Present Situation:

The Power to Detain

Florida Statute authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or

for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.¹ The subsection further prescribes that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. The subsection is also applicable to transit fare evasion with respect to detention. Innkeepers and food service establishment operators likewise have the statutory authority to "take a person into custody and detain that person" if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others.² In these situations it is also required that law enforcement be called immediately.

Private, State-Licensed Security Officers

There are several classes of licenses issued by the Division of Licensing within the Department of Agriculture and Consumer Services. Class D security officers are required to meet the following requirements:

An applicant for a Class "D" license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught.

(b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:

1. Successful completion of the total number of required hours of training before initial application for a Class "D" license; or
2. Successful completion of 24 hours of training before initial application for a Class "D" license and successful completion of the remaining 16 hours of training within 180 days after the date that the application is submitted. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department.

However, any person whose license has been revoked, suspended pursuant to subparagraph 2., or expired for 1 year or longer is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as prescribed in paragraph (a) before a license will be issued. Any person whose license was issued before January 1, 2007, and whose license has been expired for less than 1 year must, upon reapplication for a license, submit documentation of completion of the total number of hours of training prescribed by law at the time her or his initial license was issued before another license will be

¹ Section 812.015(3)(a), F.S.

² Section 509.143, F.S.

issued. This subsection does not require an individual licensed before January 1, 2007, to complete additional training hours in order to renew an active license, beyond the required total amount of training within the timeframe prescribed by law at the time she or he was licensed.

s. 493.6303(4)(a), F.S.

Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized under ch. 493, F.S., to carry their firearms on duty.

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F. S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons under limited circumstances:

311.124 Trespassing; detention by a certified seaport security officer.--

(1) Any Class D or Class G seaport security officer certified under the Maritime Transportation Security Act guidelines and s. 311.121 or any employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121 who has probable cause to believe that a person is trespassing pursuant to the provisions of s. 810.08 or s. 810.09 or this chapter in a designated restricted area pursuant to s. 311.111 is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer, and such action shall not render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

“Citizen’s Arrest”

Under Florida law a citizen has a common law right to make a “citizen’s arrest” for a felony, or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person’s guilt. *Phoenix v. State*, 455 So.2d 1024 (Fla. 1984).

III. Effect of Proposed Changes:

The CS provides that Class D and Class MB licensees for security officers, who are authorized to carry a firearm while on duty, in uniform and on the premises of their client, may temporarily detain a person who has committed, is committing, or reasonably appears to be about to commit a criminal act of which the client or patrons thereof would be victims, for the purpose of ascertaining the person's identity. The security officer is required to notify law enforcement as soon as reasonably possible.

The person being temporarily detained must be held in the place they were first detained and no longer than reasonably necessary to hand them over to law enforcement. It is the law enforcement officer's responsibility to determine the "proper disposition" under the provisions of the bill.

If the security officer has probable cause to believe the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer or others, he or she may conduct a search of the detainee and his or her belongings. Any weapon may be seized and turned over to law enforcement.

The CS amends s. 493.6118, F.S., to provide for disciplinary action if the officer commits an act of violence or use of force except in the process of a lawful detention.

The CS takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is possible that a person who is detained under this CS could raise Fourth Amendment search and seizure issues. The CS statutorily authorizes one citizen, arguably "under color of law," to detain and search another citizen virtually *on behalf of* law enforcement. It should also be noted that the security officer is empowered by the statute to detain a fellow citizen on a hunch that he or she is "about to commit" a criminal law violation. The detention of a person under those circumstances, and a subsequent search of their person, could reveal a weapon which may be evidence of a separate criminal offense. If a court later finds that this evidence that the security officer handed over to law

enforcement was not properly seized, the evidence cannot be used against the defendant in a criminal case³. This could potentially lead to disastrous results if evidence of a particularly serious crime *not* observed by the security officer was seized and later determined to be inadmissible in court.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It appears that seaport security officers, who hold a Class D license *and* undergo much more training than a person who just holds a Class D license, have more limited powers of detention than this CS would bestow upon Class D licensees in general. This may result in some seaport security officers claiming additional powers by virtue of their licensure, although that does not appear to have been the intent of the Legislature when the seaport security measures were enacted in 2006. At any rate, it is not clear if this is the intent of the bill or if this may be a potential unintended consequence, or at least an incongruity.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2008:

- The committee substitute applies to Class MB licensees (security officer/managers) as well as Class D licensees (security officers) who have the authority to carry a firearm while on duty by virtue of their Class G license.
- The committee substitute extends the area a security officer can search, under the provisions of the bill, to a detainee's belongings as well as their person.
- The committee substitute narrows the scope of what the security officer "shall provide" to law enforcement if it is found on the detainee, from "evidence" to simply "weapon."

³ This is known as the "fruit of the poisonous tree" doctrine.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
