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1 A bill to be entitled
2 An act relating to seaport security; amending s. 311.12,
3 F.S.; deleting provisions requiring the Department of Law
4 Enforcement to establish a statewide seaport access
5 eligibility reporting system; specifying that a federal
6 Transportation Worker Identification Credential is the
7 only authorization required for obtaining access to secure
8 and restricted areas of a seaport; deleting the
9 requirements for performing criminal history screening on
10 certain persons authorized to regularly enter secure and
11 restricted areas; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsections (8) through (11) of section 311.12,
16 Florida Statutes, are redesignated as subsections (6) through
17 (9), respectively, and paragraph (a) of subsection (4),
18 subsections (5) through (7), paragraph (d) of subsection (8),
19 and paragraph (a) of subsection (11) of that section, are
20 amended to read:

21 311.12 Seaport security.—

22 (4) ~~SECURE AND RESTRICTED AREAS.~~—Each seaport listed in s.
23 311.09 must clearly designate in seaport security plans, and
24 clearly identify with appropriate signs and markers on the
25 premises of a seaport, all secure and restricted areas as
26 defined by the United States Department of Homeland Security—
27 United States Coast Guard Navigation and Vessel Inspection
28 Circular No. 03-07 and 49 C.F.R. part 1572. The plans must also

29 address access eligibility requirements and corresponding
 30 security enforcement authorizations.

31 (a) The seaport's security plan must set forth the
 32 conditions and restrictions to be imposed on persons employed
 33 at, doing business at, or visiting the seaport who have access
 34 to secure and restricted areas which are sufficient to provide
 35 substantial compliance with the minimum security standards
 36 established in subsection (1) and federal regulations.

37 1. All seaport employees and other persons working at the
 38 seaport who have regular access to secure or restricted areas
 39 must comply with federal access control regulations ~~and state~~
 40 ~~criminal history checks as prescribed in this section.~~

41 2. All persons and objects in secure and restricted areas
 42 are subject to search by a sworn state-certified law enforcement
 43 officer, a Class D seaport security officer certified under
 44 Maritime Transportation Security Act of 2002 guidelines and s.
 45 311.121, or an employee of the seaport security force certified
 46 under the Maritime Transportation Security Act of 2002
 47 guidelines and s. 311.121.

48 3. Persons found in these areas without the proper
 49 permission are subject to the trespass provisions of ss. 810.08
 50 and 810.09.

51 ~~(5) ACCESS ELIGIBILITY REPORTING SYSTEM. Subject to~~
 52 ~~legislative appropriations, the Department of Law Enforcement~~
 53 ~~shall administer a statewide seaport access eligibility~~
 54 ~~reporting system.~~

55 ~~(a) The system must include, at a minimum, the following:~~
 56 ~~1. A centralized, secure method of collecting and~~

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57 ~~maintaining fingerprints, other biometric data, or other means~~
58 ~~of confirming the identity of persons authorized to enter a~~
59 ~~secure or restricted area of a seaport.~~

60 ~~2. A methodology for receiving from and transmitting~~
61 ~~information to each seaport regarding a person's authority to~~
62 ~~enter a secure or restricted area of the seaport.~~

63 ~~3. A means for receiving prompt notification from a~~
64 ~~seaport when a person's authorization to enter a secure or~~
65 ~~restricted area of a seaport has been suspended or revoked.~~

66 ~~4. A means to communicate to seaports when a person's~~
67 ~~authorization to enter a secure or restricted area of a seaport~~
68 ~~has been suspended or revoked.~~

69 ~~(b) Each seaport listed in s. 311.09 is responsible for~~
70 ~~granting, modifying, restricting, or denying access to secure~~
71 ~~and restricted areas to seaport employees, other persons working~~
72 ~~at the seaport, visitors who have business with the seaport, or~~
73 ~~other persons regularly appearing at the seaport. Based upon the~~
74 ~~person's criminal history check, each seaport may determine the~~
75 ~~specific access eligibility to be granted to that person. Each~~
76 ~~seaport is responsible for access eligibility verification at~~
77 ~~its location.~~

78 ~~(c) Upon determining that a person is eligible to enter a~~
79 ~~secure or restricted area of a port pursuant to subsections (6)~~
80 ~~and (7), the seaport shall, within 3 business days, report the~~
81 ~~determination to the department for inclusion in the system.~~

82 ~~(d) All information submitted to the department regarding~~
83 ~~a person's access eligibility screening may be retained by the~~
84 ~~department for subsequent use in promoting seaport security,~~

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85 ~~including, but not limited to, the review of the person's~~
86 ~~criminal history status to ensure that the person has not become~~
87 ~~disqualified for such access.~~

88 ~~(e) The following fees may not be charged by more than one~~
89 ~~seaport and shall be paid by the seaport, another employing~~
90 ~~entity, or the person being entered into the system to the~~
91 ~~department or to the seaport if the seaport is acting as an~~
92 ~~agent of the department for the purpose of collecting the fees:~~

93 ~~1. The cost of the state criminal history check under~~
94 ~~subsection (7).~~

95 ~~2. A \$50 fee to cover the initial cost of entering the~~
96 ~~person into the system and an additional \$50 fee every 5 years~~
97 ~~thereafter to coincide with the issuance of the federal~~
98 ~~Transportation Worker Identification Credential described in~~
99 ~~subsection (6). The fee covers all costs for entering or~~
100 ~~maintaining the person in the system including the retention and~~
101 ~~use of the person's fingerprint, other biometric data, or other~~
102 ~~identifying information.~~

103 ~~3. The seaport entering the person into the system may~~
104 ~~charge an administrative fee to cover, but not exceed, the~~
105 ~~seaport's actual administrative costs for processing the results~~
106 ~~of the state criminal history check and entering the person into~~
107 ~~the system.~~

108 ~~(f) All fees identified in paragraph (e) must be paid~~
109 ~~before the person may be granted access to a secure or~~
110 ~~restricted area. Failure to comply with the criminal history~~
111 ~~check and failure to pay the fees are grounds for immediate~~
112 ~~denial of access.~~

113 ~~(g) Persons, corporations, or other business entities that~~
 114 ~~employ persons to work or do business at seaports shall notify~~
 115 ~~the seaport of the termination, resignation, work-related~~
 116 ~~incapacitation, or death of an employee who has access~~
 117 ~~permission.~~

118 ~~1. If the seaport determines that the person has been~~
 119 ~~employed by another appropriate entity or is self-employed for~~
 120 ~~purposes of performing work at the seaport, the seaport may~~
 121 ~~reinstate the person's access eligibility.~~

122 ~~2. A business entity's failure to report a change in an~~
 123 ~~employee's work status within 7 days after the change may result~~
 124 ~~in revocation of the business entity's access to the seaport.~~

125 ~~(h) In addition to access permissions granted or denied by~~
 126 ~~seaports, Access eligibility may be restricted or revoked by the~~
 127 ~~department if there is a reasonable suspicion that the person is~~
 128 ~~involved in terrorism or criminal violations that could affect~~
 129 ~~the security of a port or otherwise render the person ineligible~~
 130 ~~for seaport access.~~

131 ~~(i) Any suspension or revocation of port access must be~~
 132 ~~reported by the seaport to the department within 24 hours after~~
 133 ~~such suspension or revocation.~~

134 ~~(j) The submission of information known to be false or~~
 135 ~~misleading to the department for entry into the system is a~~
 136 ~~felony of the third degree, punishable as provided in s.~~
 137 ~~775.082, s. 775.083, or s. 775.084.~~

138 (5) ~~(6)~~ ACCESS TO SECURE AND RESTRICTED AREAS.—

139 (a) Any person seeking authorization for unescorted access
 140 to secure and restricted areas of a seaport must possess, ~~unless~~

141 ~~waived under paragraph (7)(e),~~ a valid federal Transportation
 142 Worker Identification Credential (TWIC) and execute an affidavit
 143 under oath which provides TWIC identification information and
 144 indicates the following:

145 1. The TWIC is currently valid and in full force and
 146 effect.

147 2. The TWIC was not received through the waiver process
 148 for disqualifying criminal history allowed by federal law.

149 ~~3. He or she has not, in any jurisdiction, civilian or~~
 150 ~~military, been convicted of, entered a plea of guilty or nolo~~
 151 ~~contendere to, regardless of adjudication, or been found not~~
 152 ~~guilty by reason of insanity, of any disqualifying felony under~~
 153 ~~subsection (7) or any crime that includes the use or possession~~
 154 ~~of a firearm.~~

155 (b) Upon submission of a completed affidavit as provided
 156 in paragraph (a), ~~the completion of the state criminal history~~
 157 ~~check as provided in subsection (7), and payment of all required~~
 158 ~~fees under subsection (5),~~ a seaport shall ~~may~~ grant the person
 159 access to secure or restricted areas of the port.

160 ~~(c) Any port granting a person access to secure or~~
 161 ~~restricted areas shall report the grant of access to the~~
 162 ~~Department of Law Enforcement for inclusion in the access~~
 163 ~~eligibility reporting system under subsection (5) within 3~~
 164 ~~business days.~~

165 (c)(d) The submission of false information on the
 166 affidavit required by this section is a felony of the third
 167 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 168 775.084. Upon conviction for a violation of this provision, the

169 person convicted forfeits all privilege of access to secure or
 170 restricted areas of a seaport and is disqualified from future
 171 approval for access to such areas.

172 (d)~~(e)~~ Any affidavit form created for use under this
 173 subsection must contain the following statement in conspicuous
 174 type: "SUBMISSION OF FALSE INFORMATION ON THIS AFFIDAVIT IS A
 175 FELONY UNDER FLORIDA LAW AND WILL, UPON CONVICTION, RESULT IN
 176 DISQUALIFICATION FOR ACCESS TO A SECURE OR RESTRICTED AREA OF A
 177 SEAPORT."

178 (e)~~(f)~~ Upon each 5-year renewal of a person's TWIC, the
 179 person must submit another affidavit as required by this
 180 subsection.

181 (f) No other form of authorization is required in order to
 182 obtain unescorted access to secure or restricted areas of a
 183 seaport.

184 ~~(7) CRIMINAL HISTORY SCREENING. A fingerprint-based~~
 185 ~~criminal history check must be performed on employee applicants,~~
 186 ~~current employees, and other persons authorized to regularly~~
 187 ~~enter a secure or restricted area, or the entire seaport if the~~
 188 ~~seaport security plan does not designate one or more secure or~~
 189 ~~restricted areas.~~

190 ~~(a) A person is disqualified from employment or unescorted~~
 191 ~~access if the person:~~

192 ~~1. Was convicted of, or entered a plea of guilty or nolo~~
 193 ~~contendere to, regardless of adjudication, any of the offenses~~
 194 ~~listed in paragraph (b) in any jurisdiction, civilian or~~
 195 ~~military, including courts-martial conducted by the Armed Forces~~
 196 ~~of the United States, during the 7 years before the date of the~~

197 ~~person's application for access; or~~
 198 2. ~~Was released from incarceration, or any supervision~~
 199 ~~imposed as a result of sentencing, for committing any of the~~
 200 ~~disqualifying crimes listed in paragraph (b) in any~~
 201 ~~jurisdiction, civilian or military, during the 5 years before~~
 202 ~~the date of the person's application for access.~~
 203 ~~(b) Disqualifying offenses include:~~
 204 1. ~~An act of terrorism as defined in s. 775.30.~~
 205 2. ~~A violation involving a weapon of mass destruction or a~~
 206 ~~hoax weapon of mass destruction as provided in s. 790.166.~~
 207 3. ~~Planting of a hoax bomb as provided in s. 790.165.~~
 208 4. ~~A violation of s. 876.02 or s. 876.36.~~
 209 5. ~~A violation of s. 860.065.~~
 210 6. ~~Trafficking as provided in s. 893.135.~~
 211 7. ~~Racketeering activity as provided in s. 895.03.~~
 212 8. ~~Dealing in stolen property as provided in s. 812.019.~~
 213 9. ~~Money laundering as provided in s. 896.101.~~
 214 10. ~~Criminal use of personal identification as provided in~~
 215 ~~s. 817.568.~~
 216 11. ~~Bribery as provided in s. 838.015.~~
 217 12. ~~A violation of s. 316.302, relating to the transport~~
 218 ~~of hazardous materials.~~
 219 13. ~~A forcible felony as defined in s. 776.08.~~
 220 14. ~~A violation of s. 790.07.~~
 221 15. ~~Any crime that includes the use or possession of a~~
 222 ~~firearm.~~
 223 16. ~~A felony violation for theft as provided in s.~~
 224 ~~812.014.~~

225 ~~17. Robbery as provided in s. 812.13.~~

226 ~~18. Burglary as provided in s. 810.02.~~

227 ~~19. Any violation involving the sale, manufacture,~~
 228 ~~delivery, or possession with intent to sell, manufacture, or~~
 229 ~~deliver a controlled substance.~~

230 ~~20. Any offense under the laws of another jurisdiction~~
 231 ~~that is similar to an offense listed in this paragraph.~~

232 ~~21. Conspiracy or attempt to commit any of the offenses~~
 233 ~~listed in this paragraph.~~

234 ~~(c) Each individual who is subject to a criminal history~~
 235 ~~check shall file a complete set of fingerprints taken in a~~
 236 ~~manner acceptable to the Department of Law Enforcement for state~~
 237 ~~processing. The results of the criminal history check must be~~
 238 ~~reported to the requesting seaport and may be shared among~~
 239 ~~seaports.~~

240 ~~(d) All fingerprints submitted to the Department of Law~~
 241 ~~Enforcement shall be retained by the department and entered into~~
 242 ~~the statewide automated fingerprint identification system~~
 243 ~~established in s. 943.05(2) (b) and available for use in~~
 244 ~~accordance with s. 943.05(2) (g) and (h). An arrest record that~~
 245 ~~is identified with the retained fingerprints of a person subject~~
 246 ~~to the screening shall be reported to the seaport where the~~
 247 ~~person has been granted access to a secure or restricted area.~~
 248 ~~If the fingerprints of a person who has been granted access were~~
 249 ~~not retained, or are otherwise not suitable for use by the~~
 250 ~~department, the person must be refingerprinted in a manner that~~
 251 ~~allows the department to perform its functions as provided in~~
 252 ~~this section.~~

253 ~~(c) The Department of Law Enforcement shall establish a~~
254 ~~waiver process for a person who does not have a TWIC, obtained a~~
255 ~~TWIC through a federal waiver process, or is found to be~~
256 ~~unqualified under paragraph (a) and denied employment by a~~
257 ~~seaport or unescorted access to secure or restricted areas. If~~
258 ~~the person does not have a TWIC and a federal criminal history~~
259 ~~record check is required, the Department of Law Enforcement may~~
260 ~~forward the person's fingerprints to the Federal Bureau of~~
261 ~~Investigation for a national criminal history record check. The~~
262 ~~cost of the national check must be paid by the seaport, which~~
263 ~~may collect it as reimbursement from the person.~~

264 ~~1. Consideration for a waiver shall be based on the~~
265 ~~circumstances of any disqualifying act or offense, restitution~~
266 ~~made by the individual, and other factors from which it may be~~
267 ~~determined that the individual does not pose a risk of engaging~~
268 ~~in any act within the public seaports regulated under this~~
269 ~~chapter that would pose a risk to or threaten the security of~~
270 ~~the seaport and the public's health, safety, or welfare.~~

271 ~~2. The waiver process begins when an individual who has~~
272 ~~been denied initial employment within or denied unescorted~~
273 ~~access to secure or restricted areas of a public seaport submits~~
274 ~~an application for a waiver and a notarized letter or affidavit~~
275 ~~from the individual's employer or union representative which~~
276 ~~states the mitigating reasons for initiating the waiver process.~~

277 ~~3. Within 90 days after receipt of the application, the~~
278 ~~administrative staff of the Parole Commission shall conduct a~~
279 ~~factual review of the waiver application. Findings of fact shall~~
280 ~~be transmitted to the department for review. The department~~

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281 ~~shall make a copy of those findings available to the applicant~~
282 ~~before final disposition of the waiver request.~~

283 ~~4. The department shall make a final disposition of the~~
284 ~~waiver request based on the factual findings of the~~
285 ~~investigation by the Parole Commission. The department shall~~
286 ~~notify the waiver applicant of the final disposition of the~~
287 ~~waiver.~~

288 ~~5. The review process under this paragraph is exempt from~~
289 ~~chapter 120.~~

290 ~~6. By October 1 of each year, each seaport shall report to~~
291 ~~the department each instance of denial of employment within, or~~
292 ~~access to, secure or restricted areas, and each instance waiving~~
293 ~~a denial occurring during the last 12 months. The report must~~
294 ~~include the identity of the individual affected, the factors~~
295 ~~supporting the denial or waiver, and any other material factors~~
296 ~~used to make the determination.~~

297 ~~(f) In addition to the waiver procedure established by the~~
298 ~~Department of Law Enforcement under paragraph (e), each seaport~~
299 ~~security plan may establish a procedure to appeal a denial of~~
300 ~~employment or access based upon procedural inaccuracies or~~
301 ~~discrepancies regarding criminal history factors established~~
302 ~~pursuant to this subsection.~~

303 ~~(g) Each seaport may allow immediate access to secure or~~
304 ~~restricted areas of a seaport ~~waivers~~ on a temporary basis to~~
305 ~~meet special or emergency needs of the seaport or its users.~~
306 ~~Policies, procedures, and criteria for implementation of this~~
307 ~~paragraph must be included in the seaport security plan. ~~All~~~~
308 ~~waivers granted by the seaports pursuant to this paragraph must~~

309 ~~be reported to the department within 30 days after issuance.~~

310 (6)~~(8)~~ WAIVER FROM SECURITY REQUIREMENTS.—The Office of
 311 Drug Control and the Department of Law Enforcement may modify or
 312 waive any physical facility requirement or other requirement
 313 contained in the minimum security standards upon a determination
 314 that the purposes of the standards have been reasonably met or
 315 exceeded by the seaport requesting the modification or waiver.
 316 An alternate means of compliance must not diminish the safety or
 317 security of the seaport and must be verified through an
 318 extensive risk analysis conducted by the seaport director.

319 (d) Any modifications or waivers granted under this
 320 subsection shall be noted in the annual report submitted by the
 321 Department of Law Enforcement pursuant to subsection (8) ~~(10)~~.

322 (9)~~(11)~~ FUNDING.—

323 (a) In making decisions regarding security projects or
 324 other funding applicable to each seaport listed in s. 311.09,
 325 the Legislature may consider the Department of Law Enforcement's
 326 annual report under subsection (8) ~~(10)~~ as authoritative,
 327 especially regarding each seaport's degree of substantial
 328 compliance with the minimum security standards established in
 329 subsection (1).

330 Section 2. This act shall take effect July 1, 2011.