

- SUBJECT:** Port authority security use of data on magnetic stripes of driver licenses
- COMMITTEE:** Defense Affairs and State-Federal Relations —favorable, without amendment
- VOTE:** 6 ayes — Corte, Campbell, Berman, Herrero, Leibowitz, Noriega
0 nays
3 absent — Hodge, Merritt, P. Moreno
- WITNESSES:** For — Wade Battles, Texas Ports Association; Robin Riley, City of Seabrook; Scott Forbes, Texas Ports Association; (*Registered but did not testify*: Robert McDaniel, City of Seabrook as City Manager)

Against — None

On — Jeff Carothers, Margie Kyser, Department of Public Safety - Crime Records Service; Margaret Spinks, Department of Public Safety - Driver License Division; Judy Brown, Tommy Davis, Department of Public Safety
- BACKGROUND:** Texas currently leads the nation in marine commerce, with 13 deep-draft ports, 16 shallow-draft ports, extensive barge facilities and 423 miles of the Gulf Intracoastal Waterway. Texas port facilities are widely used for shipping and receiving of military combat equipment and supplies, as well as consumer goods.
- As a result of the September 11, 2001, terrorist attacks, Congress enacted the federal Maritime Transportation Security Act of 2002 (MTSA). The MTSA is designed to protect the nation's ports and waterways from a terrorist attack. The increased risk of terrorist attacks worldwide led the International Maritime Organization (IMO) to adopt security measures for ships and ports called the International Ship and Port Facility Security Code (ISPS) in 2002. This law, fully implemented in 2004, is the international equivalent of the MTSA. The MTSA and ISPS both require vessels and port facilities to develop security plans that include passenger, vehicle, and baggage screening procedures; security patrols; personnel identification procedures; and access control measures.

The MTSA and ISPS, along with other federal regulations, require Texas ports to control access and maintain an accounting of all individuals within the port boundaries. Violations of either regulatory scheme could result in fines or immediate shut down of the violating port by the U.S. Coast Guard.

All Texas port employees must have security badges that allow them access in and around the port periphery. Regular visitors also have security passes that contain their personal information. All land visitors to the ports must verify their identification with port security before being granted access, including providing a driver's license or other personal identification document. Currently, port security manually collects and records the information from the personal identification documents, such as all the information found on the front of a driver's license.

The 78th Legislature in 2003 limited the use of the magnetic stripe on the back of a driver's license to certain government officials and banks. Transportation Code section 521.126(b) otherwise prohibits the access or use, as well as the compiling or maintaining of a database, of electronically readable information derived from a driver's license, commercial driver's license, or personal identification certificate.

Local police departments or port police departments can serve as the lead security force inside port boundaries. However, only five Texas ports have port police forces. Because most ports do not have commissioned law enforcement departments, most ports contract with the local police or sheriff departments, or private security companies, for security of the land in and around port facilities.

DIGEST:

HB 1009 would amend section 521.126 of the Transportation Code to allow port security personnel to access, use, compile, or maintain in a database electronically readable information derived from the magnetic stripe of a driver's license, commercial driver's license, or personal identification certificate to secure the facility or port.

Port authorities could use the information only to:

- identify an individual;
- provide official credentials for an individual;
- track or limit the movement of an individual on port property;
- establish a secure database of visitors to the port;
- access the information at terminal and gate operations of the port;

or

- conduct other security or operational activities as determined by the executive or administrative head of the port facility.

The information from the magnetic stripe would be confidential and not subject to disclosure under the Public Information Act, Government Code, ch. 552.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Texas ports have a number of employees, truckers, laborers, vendors, and other maritime professionals that go in and out of the ports every day. Many first-time or infrequent visitors also come to the ports for business. The greatest risk comes from the land side of a port because of the high volume of people and cargo going in and out. HB 1009 would implement a system that efficiently would manage and track visitors to port facilities without disrupting port operations. The system would be quick, accurate and secure. The bill would provide an added security tool and speed up traffic and movement in and around the port facilities.

Because of the significant flow of goods they handle, the state's 29 ports are especially vulnerable to potential terrorist threats. It is critically important to Texas, the United States, and the world that our ports deploy the safest and most effective security methods available to ensure that terrorists will not execute a successful attack on port facilities in Texas. By complying with the security regulations, Texas ports are better able to identify and deter threats.

The new system of electronically collecting and recording personal information by using the magnetic stripe on driver's licenses would contain the same information as that on a port security badge required by all port employees. The information from the magnetic stripe is the same information that is on the front of the driver's license. Although port authorities already can manually collect this information from driver's licenses, HB 1009 would allow the information to be gathered and held electronically in a database. The electronic system would be easier and more reliable. A proximity reader within the magnetic stripe reader would register in the database and track the movements of an individual. If a problem arose within the port, authorities would better be able to

determine all individuals within port property, as well as the location of those individuals.

An attorney general's opinion (GA-0196) issued June 3, 2004, determined that a private security guard at a port facility could swipe a driver's license without it being considered compiling information. This opinion permits law enforcement to maintain the database and private security guards to swipe the cards. HB 1009 would give clear statutory authority to port authorities, including private security guards, to use the magnetic stripe to collect information that would go directly into the database.

Visitors already are required to log in and log out using their driver's license or other personal identification document. The intent is to help provide better and more efficient security to ports. Under the bill, there would be two databases, one for employees and regular visitors who have port security badges and a database for temporary visitors.

The information collected and recorded would be confidential. It would not be used to access any other databases, such as criminal databases. No information on the individual's criminal history would be recorded; neither would the picture on the front of the license. The information could be used only for port security purposes.

**OPPONENTS
SAY:**

Non-law enforcement port security personnel should not be allowed to have access to and maintain databases on this personal information. Giving access to private security personnel could allow for possible abuse and unauthorized dissemination of the information because those individuals would not be acting in a peace officer's official capacity.

**OTHER
OPPONENTS
SAY:**

The security measures allowed by HB 1009 should be extended to other high-risk areas and facilities, such as nuclear power plants, chemical plants and oil refineries.

NOTES:

According to the fiscal note, although a port authority or district would incur initial expenses associated with purchasing hardware and software necessary to implement provisions of the bill, an overall savings is expected by switching from a manual to an electronic tracking system.