STATE OF NEW YORK

8917

IN SENATE

June 4, 2018

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to empowering the division of state police to patrol the port of New York waterfront and to dissolve the waterfront commission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 11-A to read as follows:

ARTICLE 11-A

PORT OF NEW YORK WATERFRONT PATROL

Section 234-a. Definitions.
234-b. Exercise of authority.
234-c. Powers and duties.
234-d. Pier superintendents.
234-e. Stevedores.
234-f. Longshoremen.
234-g. Longshoremen lapse.
234-h. Longshoremen lapse requirements.
234-i. Qualified longshoremen register.
234-j. Longshoremen register application.
234-k. Port watchman license.
234-l. Denial, revocation, cancellation and suspension of license and applications.
234-m. Hearings.
234-n. Employment information centers.
234-o. Telecommunications system.
234-p. Application denial for crime activity.
234-q. License revocation for certain activity.
234-r. Refusal to cooperate.
234-s. Suspension pending case outcome.
234-t. Cooperation with other entities.
234-u. Preservation of rights.
234-v. Leave, transfer and retirement.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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234-w. Budget.
234-x. Disbursement of budget.
234-y. Unlawful loading and unloading.
234-z. Prohibition of certain solicitation.
234-aa. Obstruction of investigation and civil actions.
234-bb. Failure to give testimony, false testimony.
234-cc. Dissolution of commission.

§ 234-a. Definitions. As used in this article:

a. "Career offender" means a person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing methods that are deemed criminal violations against the laws of this state.

b. "Career offender cartel" means a number of career offenders acting in concert, and may include what is commonly referred to as an organized crime group.

c. "Carrier" means a carrier as that term is defined in 49 U.S.C. § 13102.

d. "Carrier of freight by water" means any person who may be engaged or who may hold himself or herself out as willing to be engaged, whether as a common carrier, a contract carrier, or otherwise, except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in that service or carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count, in the carriage of freight by water between any point in the port of New York district, as applicable only within the state of New York, and a point outside that district.

e. "Checker" means a longshoreman who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores.

f. "Commission" means the waterfront commission of New York harbor established pursuant to chapter 882 of the laws of 1953, and chapter 202 of the laws of New Jersey of 1953.

g. "Common carrier" means a common carrier as that term is defined in 46 U.S.C. § 40102.

h. "Compact" means the compact entered into by the state of New York pursuant to its agreement thereto under chapter 882 of the laws of 1953, and chapter 202 of the laws of New Jersey of 1953, as amended and supplemented.

i. "Consignee" means the person designated on a bill of lading as the recipient of waterborne freight consigned for carriage by water.

j. "Container" means any receptacle, box, carton, or crate which is specifically designed and constructed so that it may be repeatedly used for the carriage of freight by a carrier of freight by water.

k. "Contract carrier" means a contract carrier as that term is defined in 49 U.S.C. § 13102.

l. "Division" means the division of state police.

m. "Freight" means freight which has been or will be, carried by, or consigned for carriage by a carrier of freight by water.

n. "Hiring agent" means any natural person who, on behalf of a carrier of freight by water or a stevedore, shall select any longshoreman for employment, and "hiring agent" includes any natural person, who on behalf of any other person shall select any longshoreman for employment.

o. "Immunity" means that a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, pursuant to an order of the division, the person gave answer or produced evidence, and that no answer given or evidence produced shall be received against the person upon any criminal proceeding.

p. "Labor organization" means and includes any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms and conditions of employment, or other mutual aid or protection, but "labor organization" shall not include a federation or congress of labor organizations organized on a national or international basis even though one of its constituent labor organizations may represent persons so registered or licensed.

q. "Longshoreman" means a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore, to: (1) physically move waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; (2) engage in direct and immediate checking of any such freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores; (3) supervise directly and immediately others who are employed as a longshoreman; (4) physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; (5) physically move waterborne freight to or from a barge, lighter, or railroad car for transfer to or from a vessel of a carrier of freight by water which is, shall be, or shall have been berthed at the same pier or other waterfront terminal; or (6) perform labor or services involving, or incidental to, the movement of freight at a pier or other waterfront terminal.

r. "Longshoremen's register" means the register of eligible longshoremen compiled and maintained by the division pursuant to section two hundred thirty-four-f of this article.

s. "Marine terminal" means an area which includes piers, which is used primarily for the moving, warehousing, distributing, or packing of waterborne freight or freight to or from piers and which is under common ownership or control with the pier.

t. "Other waterfront terminal" means any warehouse, depot, or other terminal, other than a pier, which is located within a marine terminal in the port of New York district and which is used for waterborne freight in whole or substantial part, and includes any warehouse, depot, or other terminal, other than a pier, whether enclosed or open, which is located in a marine terminal in the port of New York district, any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight.

u. "Person" means not only a natural person but also any partnership, joint venture, association, corporation, or any other legal entity but shall not include the United States, any state or territory thereof, or any department, division, board, authority, or authority of one or more of the foregoing.

v. "Pier" means any wharf, pier, dock, or quay in regular use for the movement of waterborne freight between vessel and shore.

w. "Pier superintendent" means any natural person other than a longshoreman who is employed for work at a pier or other waterfront terminal

by a carrier of freight by water or a stevedore and whose work at the pier or other waterfront terminal includes the supervision, directly or indirectly, of the work of longshoremen.

x. "Port of New York district" or "district" means the district created by Article II of the compact dated April 30, 1921, between the states of New York and New Jersey, authorized by chapter 154 of the laws of New York of 1921 and chapter 151 of the laws of New Jersey of 1921.

y. "Port watchman" means any watchman, gateman, roundsman, detective, guard, guardian, or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in that capacity on any pier or other waterfront terminal.

z. "Select any longshoreman for employment" means select a person for the commencement or continuation of employment as a longshoreman, or the denial or termination of employment as a longshoreman.

aa. "State comptroller" and "comptroller" means the comptroller of the state of New York.

bb. "Stevedore" means a contractor, not including an employee, engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by the carrier on vessels of the carrier berthed at piers, on piers at which the vessels are berthed or at other waterfront terminals. "Stevedore" shall also include: (1) a contractor engaged for compensation pursuant to a contract or arrangement with the United States, any state or territory thereof, or any department, division, board, commission, or authority of one or more of the foregoing, in moving freight carried or consigned for carriage between any point in the port of New York district and a point outside that district on vessels of the public agency berthed at piers, on piers at which their vessels are berthed or at other waterfront terminals; (2) a contractor, engaged for compensation pursuant to a contract or arrangement with any person to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals; or (3) a contractor engaged for compensation pursuant to a contract or arrangement with any other person to perform labor or services involving, or incidental to, the movement of freight into or out of containers, which have been or which will be carried by a carrier of freight by water, on vessels berthed at piers, on piers or at other waterfront terminals.

cc. "Terrorist group" means a group associated, affiliated, or funded in whole or in part by a terrorist organization designated by the United States Secretary of State in accordance with section 219 of the federal Immigration and Nationality Act, as amended from time to time, or any other organization which assists, funds, or engages in crimes or acts of terrorism as defined in the laws of the United States, or of this state.

dd. "Transfer date" means the ninetieth day following the notification by the governor pursuant to section two hundred thirty-four-b of this article.

ee. "Waterborne freight" means freight carried by or consigned for carriage by carriers of freight by water, and shall also include freight described in the definition of "stevedore" and in the definition of "other waterfront terminal." Provided, however, that at the point at which the freight is released from a pier or marine terminal to the possession of the consignee or the person designated by the consignee, the freight shall no longer be considered waterborne freight if:

(1) the freight is not further transported by water; and

(2) services involving or incidental to the unloading, storage, inspection, grading, repackaging, or processing of freight occur at a location outside a pier or marine terminal.

ff. "Witness" means any person whose testimony is desired in any investigation, interview, or other proceeding conducted by the division under the authority granted pursuant to this article.

§ 234-b. Exercise of authority. a. Until the transfer date established pursuant to subdivision dd of section two hundred thirty-four-a of this article shall have become operative, the division shall not exercise any powers, rights, or duties conferred by this article or by any other law in any way which will interfere with the powers, rights, and duties of the commission. The division and the commission are directed to cooperate with each other after the date of notification pursuant to this section until the transfer date, and the commission shall make available to the division all information concerning its property and assets, contracts, operations, and finances within New York as the division may require to provide for the efficient exercise by the division of all powers, rights, and duties conferred upon the division by this act.

b. After the transfer date established pursuant to subdivision dd of section two hundred thirty-four-a of this article:

(1) the division shall assume all of the powers, rights, assets, and duties of the commission within this state, and those powers, rights, assets, and duties shall then and thereafter be vested in and exercised by the division;

(2) the officers having custody of the funds of the commission applicable to this state shall deliver those funds into the custody of the comptroller, the property and assets of the commission within this state shall, without further act or deed, become the property and assets of the division;

(3) any officers and employees of the commission seeking to be transferred to the division may apply to become employees of the division until determined otherwise by the division. Nothing in this article shall be construed to deprive any officers or employees of the commission of their rights, privileges, obligations, or status with respect to any pension or retirement system. The commission employees shall retain all of their rights and benefits under existing collective negotiation agreements or contracts until such time as new or revised agreements or contracts are agreed to. All existing employee representatives shall be retained to act on behalf of those employees until such time as the employees shall, pursuant to law, elect to change those representatives. If an existing officer or employee becomes a member of an administered retirement system of the state of New York, the officer or employee shall receive the same amount of service credit in the retirement system as the officer or employee previously had in the pension or retirement system as an employee of the commission, provided that there is a transfer of funds, or purchase, of the full cost of that credit from the pension or retirement system of the commission to an administered retirement system of the state of New York. Nothing in this article shall affect the civil service status, if any, of those officers or employees;

(4) all debts, liabilities, obligations, and contracts of the commission applicable only to this state, as determined by the officers having custody of the funds of the commission, except to the extent specifically provided for or established to the contrary in this article, are imposed upon the division, and all creditors of the commission and persons having claims against or contracts with the commission of any

kind or character may enforce those debts, claims, and contracts against the division as successor to the commission in the same manner as they might have done against the commission, and the rights and remedies of those holders, creditors, and persons having claims against or contracts with the commission shall not be limited or restricted in any manner by this article;

(5) in continuing the functions, contracts, obligations, and duties of the commission within this state, the division is authorized to act in its own name as may be convenient or advisable under the circumstances from time to time;

(6) any references to the commission in any other law or regulation shall then and thereafter be deemed to refer and apply to the division;

(7) all rules and regulations of the commission shall continue in effect as the rules and regulations of the division until amended, supplemented, or rescinded by the division pursuant to the state administrative procedure act. Regulations of the commission inconsistent with the provisions of this article or of regulations of the division shall be deemed void;

(8) all operations of the commission within this state shall continue as operations of the division until altered by the division as provided or permitted pursuant to this article; and

(9) the powers vested in the division by this article shall be construed as being in addition to, and not in diminution of, the powers heretofore vested by law in the commission to the extent not otherwise altered or provided for in this article.

c. A license, registration, or permit issued by the commission prior to the date of notification pursuant to section two hundred thirty-four-b of this article shall, subject to the terms of its issuance, continue to be valid on and after the transfer date as a license, registration, or permit issued by the division. An application for a license, registration, or permit filed with the commission prior to and pending on that notification date shall, as of and from the notification date, be deemed to be filed with and pending before the division.

§ 234-c. Powers and duties. In addition to the powers and duties elsewhere prescribed in this article, the division shall have the power:

a. to determine the location, size, and suitability of accommodations necessary and desirable for the establishment and maintenance of the employment information centers provided in section two hundred thirty-four-n of this article and for administrative offices for the division;

b. to administer and enforce the provisions of this article;

c. consistent with the provisions of the state administrative procedure act, to adopt and enforce rules and regulations as the division may deem necessary to effectuate the purposes of this article or to prevent the circumvention or evasion thereof;

d. by its members and its properly designated officers, agents, and employees, with respect to the implementation and enforcement of this article, to administer oaths and issue subpoenas to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

e. to have for its properly designated officers, agents and employees, full and free access, ingress, and egress to and from all vessels, piers, and other waterfront terminals or other places in the port of New York district within this state, for the purposes of making inspection or enforcing the provisions of this article and no person shall obstruct or in any way interfere with any officer, employee, or agent of the division in the making of an inspection, or in the enforcement of the

provisions of this article or in the performance of any other power or duty under this article;

f. to recover possession of any suspended or revoked license issued pursuant to sections two hundred thirty-four-f, two hundred thirty-four-g, and two hundred thirty-four-k of this article within the port of New York district in this state;

g. to make investigations and collect and compile information concerning waterfront practices generally within the port of New York district in this state and upon all matters relating to the accomplishment of the objectives of this article;

h. to advise and consult with representatives of labor and industry and with public officials and agencies concerned with the effectuation of the purposes of this article upon all matters which the division may desire, including but not limited to, the form and substance of rules and regulations, the administration of the provisions of this article, maintenance of the longshoremen's register, and issuance and revocation of licenses;

i. to make annual and other reports to the governor and to the legislature containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district in this state and for the effectuation of the purposes of this article. The annual reports shall state the division's findings and determinations as to whether the public necessity still exists for: (1) the continued registration of longshoremen; (2) the continued licensing of any occupation or employment required to be licensed hereunder; and (3) the continued public operation of the employment information centers provided for in section two hundred thirty-four-n of this article;

j. to cooperate with and receive from any department, division, bureau, board, commission, authority, or agency of this state, or of any county or municipality thereof, any assistance and data as will enable the division to properly to carry out its powers and duties hereunder; and to request a department, division, bureau, board, commission, authority, or agency, with the consent thereof, to execute the division's functions and powers, as the public interest may require;

k. to exercise the powers and duties of the division as provided in this article to its officers, employees, and agents designated by the division;

l. to issue temporary permits and permit temporary registrations under such terms and conditions as the division may prescribe which shall be valid for a period to be fixed by the division not in excess of six months;

m. to require any applicant for a license or registration or any prospective licensee to furnish facts and evidence as the division may deem appropriate to enable it to ascertain whether the license or registration should be granted;

n. in any case in which the division has the power to revoke, cancel or suspend any license, the division shall also have the power to impose as an alternative to that revocation, cancellation, or suspension, a penalty, which the licensee may elect to pay the division in lieu of the revocation, cancellation, or suspension. The maximum penalty shall be five thousand dollars for each separate offense. The division may, for good cause shown, abate all or part of the penalty;

o. to designate any officer, agent, or employee of the division to be an investigator who shall be vested with all the powers of a peace or police officer of the state of New York;

p. to confer immunity, in the manner prescribed by section two hundred thirty-four-r of this article;

q. to require any applicant or renewal applicant for registration as a longshoreman, any applicant or renewal applicant for registration as a checker, or any applicant or renewal applicant for registration as a telecommunications system controller and any person who is sponsored for a license as a pier superintendent or hiring agent, any person who is an individual owner of an applicant or renewal applicant stevedore, or any persons who are individual partners of an applicant or renewal applicant stevedore, or any officers, directors, or stockholders owning five percent or more of any of the stock of an applicant or renewal applicant corporate stevedore or any applicant or renewal applicant for a license as a port watchman or any other category of applicant or renewal applicant for registration or licensing within the division's jurisdiction to be fingerprinted by the division at the cost and expense of the applicant or renewal applicant;

r. to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the State Bureau of Identification for use in making the determinations required by this section; and

s. notwithstanding any other provision of law, rule, or regulation to the contrary, to require any applicant for employment or employee of the division engaged in the implementation or enforcement of this article to be fingerprinted at the cost and expense of the applicant or employee and to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the State Bureau of Identification for use in the hiring or retention of those persons.

§ 234-d. Pier superintendents. a. A person shall not act as a pier superintendent or as a hiring agent within the port of New York district in this state without first having obtained from the division a license to act as a pier superintendent or hiring agent, as the case may be, and a person shall not employ or engage another person to act as a pier superintendent or hiring agent who is not so licensed.

b. A license to act as a pier superintendent or hiring agent shall be issued only upon the written application, under oath, of the person proposing to employ or engage another person to act as a pier superintendent or hiring agent, verified by the prospective licensee as to the matters concerning the prospective licensee, and shall state the following:

(1) The full name and business address of the applicant;

(2) The full name, residence, business address, if any, place and date of birth, and social security number of the prospective licensee;

(3) The present and previous occupations of the prospective licensee, including the places where the person was employed and the names of the person's employers;

(4) Any further facts and evidence as may be required by the division to ascertain the character, integrity, and identity of the prospective licensee; and

(5) That if a license is issued to the prospective licensee, the applicant will employ the licensee as pier superintendent or hiring agent, as the case may be.

c. A license shall not be granted pursuant to this section:

(1) Unless the division shall be satisfied that the prospective licensee possesses good character and integrity;

(2) If the prospective licensee has, without subsequent pardon, been convicted by a court of the United States, or any state or territory thereof, of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter, or any of the following offenses: illegally using, carrying, or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled dangerous substance or a controlled dangerous substance analog; or a violation prescribed in subdivision g of this section. Any prospective licensee ineligible for a license by reason of any conviction under this paragraph may submit satisfactory evidence to the division that the prospective licensee has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so acted as to warrant the grant of a license, in which event the division may, in its discretion, issue an order removing that ineligibility. The five-year period shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence; and

(3) If the prospective licensee knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of a group having that advocacy.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the prospective licensee possesses the qualifications and requirements prescribed in this section, the division shall issue and deliver to the prospective licensee a license to act as pier superintendent or hiring agent for the applicant, as the case may be, and shall inform the applicant of this action. The division may issue a temporary permit to any prospective licensee for a license issued under this section pending final action on an application made for that license. Any temporary permit shall be valid for a period not in excess of thirty days.

e. A person shall not be licensed to act as a pier superintendent or hiring agent for more than one employer, except at a single pier or other waterfront terminal, but nothing in this article shall be construed to limit in any way the number of pier superintendents or hiring agents any employer may employ.

f. A license granted pursuant to this section shall continue through the duration of the licensee's employment by the employer who shall have applied for the license.

g. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(1) conviction of a crime or act by the licensee or other cause which would require or permit the person's disqualification from receiving a license upon original application;

(2) fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;

(3) violation of any of the provisions of this article;

(4) unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled dangerous substance or a controlled dangerous substance analog;

(5) employing, hiring, or procuring any person in violation of this article or inducing or otherwise aiding or abetting any person to violate the terms of this article;

(6) paying, giving, causing to be paid or given or offering to pay or give to any person any valuable consideration to induce the other person to violate any provision of this article or to induce any public officer, agent, or employee to fail to perform the person's duty hereunder;

(7) consorting with known criminals for an unlawful purpose;

(8) transfer or surrender of possession of the license to any person either temporarily or permanently without satisfactory explanation;

(9) false impersonation of another licensee under this article;

(10) receipt or solicitation of anything of value from any person other than the licensee's employer as consideration for the selection or retention for employment of any longshoreman;

(11) coercion of a longshoreman by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

(12) lending any money to or borrowing any money from a longshoreman for which there is a charge of interest or other consideration; or

(13) membership in a labor organization which represents longshoremen or port watchmen; but nothing in this section shall be deemed to prohibit pier superintendents or hiring agents from being represented by a labor organization or organizations which do not also represent longshoremen or port watchmen. The American Federation of Labor, the Congress of Industrial Organizations and any other similar federation, congress, or other organization of national or international occupational or industrial labor organizations shall not be considered an organization which represents longshoremen or port watchmen within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or port watchmen.

§ 234-e. Stevedores. a. A person shall not act as a stevedore within the port of New York district in this state without having first obtained a license from the division, and a person shall not employ a stevedore to perform services as such within the port of New York district unless the stevedore is so licensed.

b. Any person intending to act as a stevedore within the port of New York district shall file in the office of the division a written application for a license to engage in that occupation, duly signed, and verified as follows:

(1) If the applicant is a natural person, the application shall be signed and verified by that person and if the applicant is a partnership, the application shall be signed and verified by each natural person composing or intending to compose that partnership. The application shall state the full name, age, residence, business address, if any, present and previous occupations of each natural person so signing the application, and any other facts and evidence as may be required by the division to ascertain the character, integrity, and identity of each natural person signing the application.

(2) If the applicant is a corporation, the application shall be signed and verified by the president, secretary, and treasurer thereof, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, the names and addresses of, and the amount of the stock held by stockholders

owning five percent or more of any of the stock thereof, and of all officers, including all members of the board of directors. The requirements of subdivision a of this section as to a natural person who is a member of a partnership, and the requirements as may be specified in rules and regulations promulgated by the division pursuant to the state administrative procedure act shall apply to each above-named officer or stockholder and their successors in office or interest, as the case may be. In the event of the death, resignation, or removal of any officer, and in the event of any change in the list of stockholders who shall own five percent or more of the stock of the corporation, the secretary of the corporation shall forthwith give notice of that fact in writing to the division, certified by the secretary.

c. A license shall not be granted:

(1) if any person whose signature or name appears in the application is not the real party in interest, required by paragraph two of subdivision b of this section, to sign or to be identified in the application or if the person so signing or named in the application is an undisclosed agent or trustee for any real party in interest;

(2) unless the division shall be satisfied that the applicant and all members, officers, and stockholders required by paragraph two of subdivision b of this section to sign or be identified in the application for license possess good character and integrity;

(3) unless the applicant is either a natural person, partnership, or corporation;

(4) unless the applicant shall be a party to a contract then in force or which will take effect upon the issuance of a license, with a carrier of freight by water for the loading and unloading by the applicant of one or more vessels of such carrier at a pier within the port of New York district;

(5) if the applicant or any member, officer, or stockholder required by paragraph two of subdivision b of this section to sign or be identified in the application for license has, without subsequent pardon, been convicted by a court of the United States or any state or territory thereof of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter, or any of the offenses described in subdivision f of this section. Any applicant ineligible for a license by reason of any of those convictions may submit satisfactory evidence to the division that the person whose conviction was the basis of ineligibility has for a period of not less than five years, measured as hereinafter provided and up to the time of application, so acted as to warrant the grant of that license, in which event the division may, in its discretion issue an order removing that ineligibility. The aforesaid period of five years shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence;

(6) if the applicant has paid, given, caused to have been paid or given, or offered to pay or give to any officer or employee of any carrier of freight by water any valuable consideration for an improper or unlawful purpose or to induce that person to procure the employment of the applicant by the carrier for the performance of stevedoring services; or

(7) if the applicant has paid, given, caused to be paid or given, or offered to pay or give to any officer or representative of a labor organization any valuable consideration for an improper or unlawful purpose or to induce the officer or representative to subordinate the

interests of the labor organization or its members in the management of the affairs of the labor organization to the interests of the applicant.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed in this section, the division shall issue and deliver a license to that applicant. The division may issue a temporary permit to any applicant for a license under the provisions of this section pending final action on an application made for a license. A temporary permit shall be valid for a period not in excess of thirty days.

e. A stevedore's license shall be for a term of five years or fraction of that five-year period, and shall expire on the first day of December. In the event of the death of the licensee, if a natural person, or its termination or dissolution by reason of the death of a partner, if a partnership, or if the licensee shall cease to be a party to any contract of the type prescribed by paragraph four of subdivision c of this section the license shall terminate ninety days after that event or upon its expiration date, whichever shall be sooner. A license may be renewed by the division for successive five-year periods upon fulfilling the same requirements as are established in this section for an original application for a stevedore's license.

f. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses on the part of the licensee or of any person required by this section to sign or be identified in an original application for a license:

(1) conviction of a crime or other cause which would permit or require disqualification of the licensee from receiving a license upon original application;

(2) fraud, deceit, or misrepresentation in securing the license or in the conduct of the licensed activity;

(3) failure by the licensee to maintain a complete set of books and records containing a true and accurate account of the licensee's receipts and disbursements arising out of the licensee's activities within the port of New York district in this state;

(4) failure to keep its books and records available during business hours for inspection by the division and its duly designated representatives until the expiration of the fifth calendar year following the calendar year during which occurred the transactions recorded therein; or

(5) any other offense described in this section.

g. In addition to the grounds elsewhere established in this article the division shall not grant an application for a license as stevedore if the applicant has paid, given, caused to have been paid or given, or offered to pay or give to any agent of any carrier of freight by water any valuable consideration for an improper or unlawful purpose or, without the knowledge and consent of the carrier, to induce the agent to procure the employment of the applicant by the carrier or its agent for the performance of stevedoring services.

§ 234-f. Longshoremen. a. The division shall establish a longshoremen's register in which shall be included all qualified longshoremen eligible, as hereinafter provided, for employment as longshoremen in the port of New York district in this state. A person shall not act as a longshoreman within the port of New York district in this state

unless at the time the person is included in the longshoremen's register, and a person shall not employ another to work as a longshoreman within the port of New York district in this state unless at the time the other person is included in the longshoremen's register.

b. Any person applying for inclusion in the longshoremen's register shall file at a place and in a manner as the division shall designate a written statement, signed, and verified by the applicant, setting forth the applicant's full name, residence address, social security number, and any further facts and evidence as the division may prescribe to establish the identity of that person and the person's criminal record, if any.

c. The division may in its discretion deny application for inclusion in the longshoremen's register by a person:

(1) who has been convicted by a court of the United States or any state or territory thereof, without subsequent pardon, of treason, murder, manslaughter, or of any of the offenses described in subdivision g of section two hundred thirty-four-d of this article or of attempt or conspiracy to commit any of those crimes;

(2) who knowingly or willingly advocates the desirability of overthrowing or destroying the government of the United States by force or violence or who shall be a member of a group which advocates that desirability knowing the purposes of the group advocating that desirability; or

(3) whose presence at the piers or other waterfront terminals in the port of New York district in this state is found by the division, on the basis of the facts and evidence before it, to constitute a danger to the public peace or safety.

d. Unless the division shall determine to exclude the applicant from the longshoremen's register for violation of the offenses described in subdivision g of section two hundred thirty-four-d of this article it shall include that person in the longshoremen's register. The division may permit temporary registration of any applicant under the provisions of this section pending final action on an application made for temporary registration. Any temporary registration shall be valid for a period not in excess of thirty days.

e. The division shall have power to reprimand any longshoreman registered under this section or to remove the person from the longshoremen's register for a period of time as it deems in the public interest for any of the following offenses:

(1) Conviction of a crime or other cause which would permit disqualification of a person from inclusion in the longshoremen's register upon original application;

(2) Fraud, deceit, or misrepresentation in securing inclusion in the longshoremen's register;

(3) Transfer or surrender of possession to any person either temporarily or permanently of any card or other means of identification issued by the authority as evidence of inclusion in the longshoremen's register, without satisfactory explanation;

(4) False impersonation of another longshoreman registered under this section or of another person licensed pursuant to this article;

(5) Willful commission of or willful attempt to commit at or on a waterfront terminal or adjacent highway any act of physical injury to any other person or of willful damage to or misappropriation of any other person's property, unless justified or excused by law; and

(6) Any other offense described in subdivision g of section two hundred thirty-four-d of this article.

f. Whenever, as a result of amendments to this article or of a ruling by the division, registration as a longshoreman is required for any person to continue in employment, that person shall be registered as a longshoreman; provided, however, that the person satisfies all the other requirements of this article for registration as a longshoreman.

g. The division shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register in the event that the holder thereof has been removed from the longshoremen's register.

h. Nothing contained in this article shall be construed to limit in any way any labor rights reserved by this article.

§ 234-g. Longshoremen lapse. a. The division shall, at regular intervals, remove from the longshoremen's register any person who shall have been registered for at least nine months and who shall have failed during the preceding six calendar months either to have worked as a longshoreman in the port of New York district in this state or to have applied for employment as a longshoreman at an employment information center established under section two hundred thirty-four-n of this article for the minimum number of days as shall have been established by the division pursuant to subdivision b of this section.

b. On or before the first day of June following the date on which this article becomes operative, and on or before each succeeding first day of June or December, the division shall, for the purposes of this article establish for the six-month period beginning on each date a minimum number of days and the distribution of the days during that period.

c. In establishing any minimum number of days or period, the division shall consult with the collective bargaining representatives of stevedores and other employers of longshoremen in the port of New York district and with labor organizations representing longshoremen in the district.

d. A longshoreman who has been removed from the longshoremen's register pursuant to subdivision e of section two hundred thirty-four-f of this article may seek reinstatement upon fulfilling the same requirements as for initial inclusion in the longshoremen's register, but not before the expiration of one year from the date of removal, except that immediate reinstatement shall be made upon proper showing that the registrant's failure to work or apply for work for the minimum number of days, described in subdivision c of this section, was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause.

e. Notwithstanding any other provision of this article, the division shall at any time have the power to register longshoremen on a temporary basis to meet special or emergency needs.

§ 234-h. Longshoremen lapse requirements. Notwithstanding any other provisions of this article the division shall have the power to remove from the longshoremen's register any person, including a person registered as longshoremen for less than nine months, who shall have failed to have worked as a longshoreman in the port of New York district in this state for a minimum number of days during a period of time as shall have been established by the division. In administering this section, the division, in its discretion, may count applications for employment as a longshoreman at an employment information center established pursuant to section two hundred thirty-four-n of this article as constituting actual work as a longshoreman, provided, however, that the division shall count as actual work the compensation received by any longshoreman

pursuant to the guaranteed wage provisions of any collective bargaining agreement relating to longshoremen. Prior to the commencement of any period of time established by the division pursuant to this section, the division shall establish for that period the minimum number of days of work required and the distribution of days during that period and shall also determine whether or not application for employment as a longshoreman shall be counted as constituting actual work as a longshoreman. The division may classify longshoremen according to length of service as a longshoreman and develop other criteria as may be reasonable and necessary to carry out the provisions of this article. The division shall have the power to vary the requirements of this section with respect to their application to the various classifications of longshoremen. Nothing in this section shall be construed to modify, limit, or restrict in any way any of the rights protected by section two hundred thirty-four-u of this article.

§ 234-i. Qualified longshoremen register. a. The division shall establish within the longshoremen's register a list of all qualified longshoremen eligible, as hereinafter provided, for employment as checkers in the port of New York district in this state. A person shall not act as a checker within the port of New York district in this state unless at the time the person is included in the longshoremen's register as a checker, and a person shall not employ another to work as a checker within the port of New York district in this state unless at the time such other person is included in the longshoremen's register as a checker.

b. Any person applying for inclusion in the longshoremen's register as a checker shall file at a place and in a manner as the division shall designate a written statement, signed, and verified by the applicant, setting forth the following:

(1) The full name, residence, place and date of birth, and social security number of the applicant;

(2) The present and previous occupations of the applicant, including the places where the applicant was employed and the names of the applicant's employers; and

(3) Any further facts and evidence as may be required by the authority to ascertain the character, integrity, and identity of the applicant.

c. A person shall not be included in the longshoremen's register as a checker:

(1) unless the division shall be satisfied that the applicant possesses good character and integrity;

(2) if the applicant has, without subsequent pardon, been convicted by a court of the United States or any state or territory thereof, of the authority of, or the attempt or conspiracy to commit treason, murder, manslaughter, or any of the following offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog; petty larceny, where the evidence shows the property was stolen from a vessel, pier or other waterfront terminal; or a violation of this article. An applicant ineligible for inclusion in the longshoremen's register as a checker by reason of a conviction may submit satisfactory evidence to the division that the applicant has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so acted as to warrant inclusion in the longshoremen's

register as a checker, in which event the division may, in its discretion, issue an order removing the applicant's ineligibility. The five-year period shall be measured either from the date of payment of any fine imposed upon that person or the suspension of sentence or from the date of the person's unrevoked release from custody by parole, commutation, or termination of sentence; or

(3) if the applicant knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of the group advocating that desirability.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the division shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed by this section, the division shall include the applicant in the longshoremen's register as a checker. The division may permit temporary registration as a checker to any applicant under this section pending final action on an application made for temporary registration, under the terms and conditions as the division may prescribe, which shall be valid for a period to be fixed by the division, not in excess of six months.

e. The division shall have power to reprimand any checker registered under this section or to remove the person from the longshoremen's register as a checker for a period of time as the division deems in the public interest for any of the following offenses:

(1) conviction of a crime or other cause which would permit disqualification of the person from inclusion in the longshoremen's register as a checker upon original application;

(2) fraud, deceit, or misrepresentation in securing inclusion in the longshoremen's register as a checker or in the conduct of the registered activity;

(3) violation of any of the provisions of this article;

(4) unlawfully possessing, possessing with intent to distribute, sale, or distribution of a controlled dangerous substance or a controlled dangerous substance analog;

(5) inducing or otherwise aiding or abetting any person to violate the terms of this article;

(6) paying, giving, causing to be paid or given, or offering to pay or give to any person any valuable consideration to induce the other person to violate any provision of this article or to induce any public officer, agent, or employee to fail to perform the person's duty under this article;

(7) consorting with known criminals for an unlawful purpose;

(8) transfer or surrender of possession to any person either temporarily or permanently of any card or other means of identification issued by the division as evidence of inclusion in the longshoremen's register without satisfactory explanation; or

(9) false impersonation of another longshoreman or of another person licensed under this article.

f. The division shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register as a checker in the event that the holder thereof has been removed from the longshoremen's register as a checker.

g. Nothing contained in this section shall be construed to limit in any way any rights of labor reserved by section two hundred thirty-four-u this article.

§ 234-j. Longshoremen register application. The division shall accept applications for inclusion in the longshoremen's register upon:

a. the joint recommendation in writing of stevedores and other employers of longshoremen in the port of New York district in this state, acting through their representative for the purposes of collective bargaining with a labor organization representing the longshoremen in the district, and that labor organization; or

b. the petition in writing of a stevedore or other employer of longshoremen in the port of New York district in this state which does not have a representative for the purposes of collective bargaining with a labor organization representing those longshoremen.

§ 234-k. Port watchman license. a. A person shall not act as a port watchman within the port of New York district in this state without first having obtained a license from the division, and a person shall not employ a port watchman who is not so licensed.

b. A license to act as a port watchman shall be issued only upon written application, duly verified, which shall state the following:

(1) The full name, residence, business address, if any, place, and date of birth, and social security number of the applicant;

(2) The present and previous occupations of the applicant, including the places where the applicant was employed and the names of the applicant's employers;

(3) The citizenship of the applicant and, if the person is a naturalized citizen of the United States, the court and date of naturalization; and

(4) Any further facts and evidence as may be required by the division to ascertain the character, integrity, and identity of the applicant.

c. A port watchman license shall not be granted:

(1) Unless the division shall be satisfied that the applicant possesses good character and integrity;

(2) If the applicant has, without subsequent pardon, been convicted by a court of the United States or of any state or territory thereof of the authority of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any of the offenses described in subdivision g of section two hundred thirty-four-d of this article;

(3) Unless the applicant shall meet reasonable standards of physical and mental fitness for the discharge of a port watchman's duties as may from time to time be established by the division;

(4) If the applicant shall be a member of any labor organization which represents longshoremen or pier superintendents or hiring agents; but nothing in this article shall be deemed to prohibit port watchmen from being represented by a labor organization or organizations which do not also represent longshoremen or pier superintendents or hiring agents. The American Federation of Labor, the Congress of Industrial Organizations (AFL-CIO) and any other similar federation, congress, or other organization of national or international occupational or industrial labor organizations shall not be considered a labor organization which represents longshoremen or pier superintendents or hiring agents within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or pier superintendents or hiring agents; or

(5) If the applicant knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates that desirability, knowing the purposes of the group's advocacy.

d. When the application shall have been examined and further inquiry and investigation made as the division shall deem proper and when the authority shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed in this section and regulations issued pursuant thereto, the division shall issue and deliver a license to the applicant. The division may issue a temporary permit to any applicant for a license under the provisions of this section pending final action on an application made for that license. Any temporary permit shall be valid for a period not in excess of thirty days.

e. A license granted pursuant to this section shall continue for a term of three years. A license may be renewed by the division for successive three-year periods upon fulfilling the same requirements established in this section for an original application.

f. Notwithstanding any provision of this section, a license to act as a port watchman shall continue indefinitely and need not be renewed, provided that the licensee shall, as required by the division:

(1) Submit to a medical examination and meet the physical and mental fitness standards as may be established by the division;

(2) Complete a refresher course of training; and

(3) Submit supplementary personal history information.

g. Any license issued pursuant to this section may be revoked or suspended for a period as the division deems in the public interest or the licensee thereunder may be reprimanded for any of the following offenses:

(1) Conviction of a crime or other cause which would permit or require the holder's disqualification from receiving a license upon original application;

(2) Fraud, deceit, or misrepresentation in securing the license; and

(3) Any other offense described in subdivision g of section two hundred thirty-four-d of this article.

h. The division shall, at regular intervals, cancel the license or temporary permit of a port watchman who has failed during the preceding twelve months to work as a port watchman in the port of New York district in this state a minimum number of hours as established by the division, except that the division shall immediately restore the license or temporary permit upon a proper showing that the failure to so work was caused by the fact that the licensee or permit holder was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause.

i. Any port watchman ineligible for a license by reason pursuant to this section may petition for and the division may issue an order removing the ineligibility. A petition for an order to remove an ineligibility may be made to the division before or after the hearing required by section two hundred thirty-four-l of this article.

§ 234-l. Denial, revocation, cancellation and suspension of license and applications. a. The division shall not deny any application for a license or registration without giving the applicant or prospective licensee reasonable prior notice and an opportunity to be heard at a hearing conducted by the division.

b. Any application for a license or for inclusion in the longshoremen's register, and any license issued or registration made, may be denied, revoked, cancelled, or suspended as the case may be, only in the manner prescribed in this section.

c. The division may on its own initiative or on complaint of any person, including any public official or agency, institute proceedings to revoke, cancel, or suspend any license or registration after a hear-

ing at which the licensee or registrant and any person making a complaint shall be given an opportunity to be heard, provided that any order of the division revoking, cancelling, or suspending any license or registration shall not become effective until fifteen days subsequent to the serving of notice thereof upon the licensee or registrant unless in the opinion of the division the continuance of the license or registration for that period would be inimical to the public peace or safety. The hearing shall be held in a manner and upon notice as may be prescribed by the rules of the division, but the notice shall be of not less than ten days and shall state the nature of the complaint.

d. Pending the determination of a hearing pursuant to this section, the division may temporarily suspend a license or registration if, in the opinion of the division, the continuance of the license or registration for that fifteen day period, pursuant to subdivision c of this section, is inimical to the public peace or safety.

e. The division, or a member, officer, employee, or agent of the division as may be designated by the division for such purpose, shall have the power to issue subpoenas to compel the attendance of witnesses and the giving of testimony or production of other evidence and to administer oaths in connection with a hearing. It shall be the duty of the division or of any member, officer, employee, or agent of the division designated by the division for that purpose to issue subpoenas at the request of and upon behalf of the licensee, registrant, or applicant. The person conducting the hearing on behalf of the division shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in conducting the hearing.

f. Upon the conclusion of the hearing, the division shall take action upon the findings and determination as the division deems proper and shall execute an order carrying its findings into effect. The action in the case of an application for a license or registration shall be the granting or denial thereof. The action in the case of a licensee shall be revocation of the license or suspension thereof for a fixed period or reprimand or a dismissal of the charges. The action in the case of a registered longshoreman shall be dismissal of the charges, reprimand, or removal from the longshoremen's register for a fixed period or permanently.

g. The action of the division, in denying any application for a license or in refusing to include any person in the longshoremen's register established pursuant to section two hundred thirty-four-f of this article or in suspending or revoking a license or removing any person from the longshoremen's register or in reprimanding a licensee, or registrant, shall be subject to judicial review by a proceeding instituted in this state at the instance of the applicant, licensee, or registrant in the manner provided by state law for review of the final decision or action of an administrative agency of the state; provided, however, that notwithstanding any other provision of law, the court shall have power to stay for not more than thirty days an order of the division suspending or revoking a license or removing a longshoreman from the longshoremen's register.

§ 234-m. Hearings. a. At hearings conducted by the division, pursuant to section two hundred thirty-four-l of this article applicants, prospective licensees, licensees, and registrants shall have the right to be accompanied and represented by counsel.

b. After the conclusion of a hearing but prior to the making of an order by the division, a hearing may, upon petition and in the discretion of the hearing officer, be reopened for the presentation of

additional evidence. A petition to reopen the hearing shall state in detail the nature of the additional evidence, together with the reasons for the failure to submit such evidence prior to the conclusion of the hearing. The division may upon its own motion and upon reasonable notice reopen a hearing for the presentation of additional evidence. Upon petition, after the making of an order of the division, rehearing may be granted in the discretion of the division. A petition for rehearing shall state in detail the grounds upon which the petition is based and shall separately set forth each error of law and fact alleged to have been made by the division in its determination, together with the facts and arguments in support thereof. The petition shall be filed with the division not later than thirty days after service of the division's order, unless the division for good cause shown shall otherwise direct. The division may upon its own motion grant a rehearing after the making of an order.

§ 234-n. Employment information centers. a. The division is hereby designated on its own behalf or as agent of the state of New York, as provided by the act of Congress of the United States entitled the Wagner-Peyser Act, as amended, for the purpose of obtaining the benefits of that act of Congress as are necessary or appropriate to the establishment and operation of employment information centers authorized by this section.

b. The division shall have all powers necessary to take steps to formulate plans and to execute projects related to the establishment and operation of employment information centers, as may be necessary to obtain any benefits for the operation of employment information centers in accomplishing the purposes of this article.

c. Any officer or agency designated by this state, is authorized and empowered, upon the request of the division and subject to its direction, to exercise the powers and duties conferred upon the division by the provisions of this section.

d. The division shall establish and maintain one or more employment information centers within the port of New York district in this state at locations as the division may determine. A person shall not, directly or indirectly, hire any person for work as a longshoreman or port watchman within the port of New York district in this state, except through an employment information center as may be prescribed by the division. A person shall not accept any employment as a longshoreman or port watchman within the port of New York district in this state, except through an employment information center. At each employment information center, the division shall keep and exhibit the longshoremen's register and any other records the division shall determine to the end that longshoremen and port watchmen shall have the maximum information as to available employment at any time within the port of New York district in this state and that employers shall have an adequate opportunity to fill their requirements of registered longshoremen and port watchmen at all times.

e. Every employer of longshoremen or port watchmen within the port of New York district in this state shall furnish information as may be required by the rules and regulations prescribed by the division with regard to the name of each person hired as a longshoreman or port watchman, the time and place of hiring, the time, place, and hours of work, and the compensation therefor.

§ 234-o. Telecommunications system. a. The division may designate one of the employment information centers it is authorized to establish and maintain under section two hundred thirty-four-n of this article for the

implementation of a telecommunications hiring system through which longshoremen and checkers may be hired and accept employment without any personal appearance at the center. The telecommunications hiring system shall incorporate hiring and seniority agreements between the employers of longshoremen and checkers and the labor organizations representing longshoremen and checkers in the port of New York district in this state, provided the agreements are not in conflict with the provisions of this article.

b. The division shall permit employees of the management organizations representing employers of longshoremen and checkers in the port of New York district in this state, and of the labor organizations representing longshoremen and checkers in the port of New York district in this state, or of a joint board of these management and labor organizations, to participate in the operation of the telecommunications hiring system, if these employees are registered by the division as "telecommunications system controllers", with respect to the registration of checkers. A person shall not act as a "telecommunications system controller" unless that person is registered. An application for registration and a registration made or issued may be denied, revoked, cancelled, or suspended, as the case may be, only in the manner prescribed in section two hundred thirty-four-i of this article. Participation in the operation of the telecommunications hiring system shall be monitored by the division.

c. The records, documents, tapes, discs, and other data compiled, collected or maintained by a management organization, a labor organization, and a joint board of these management and labor organizations pertaining to the telecommunications hiring system shall be available for inspection, investigation, and duplication by the division.

§ 234-p. Application denial for crime activity. In addition to the grounds elsewhere established in this article the division may deny an application for a license or registration for any of the following:

a. conviction by a court of the United States or any state or territory thereof of coercion;

b. conviction by a court described in subdivision a of this section, after having been previously convicted by that court of any crime or of the offenses hereinafter set forth, or any of the following offenses: assault, malicious injury to property, malicious mischief, unlawful taking of a motor vehicle, corruption of employees or possession of illegal betting number slips;

c. fraud, deceit or misrepresentation in connection with any application or petition submitted to, or any interview, hearing or proceeding conducted by the division or commission;

d. violation of any provision of this article or commission of any offense thereunder;

e. refusal on the part of any applicant, or prospective licensee, or of any member, officer or stockholder required by section two hundred thirty-four-e of this article to sign or be identified in an application for a stevedore license, to answer any material question or produce any material evidence in connection with the person's application or any application made on the person's behalf for a license or registration pursuant to section two hundred thirty-four-e of this article;

f. association with a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group, a terrorist group, or a career offender cartel, or who is a career offender, under circumstances where that association creates a reasonable belief that the participation of the applicant in

any activity required to be licensed or registered under this article would be inimical to the purposes of this article; or

g. conviction of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any state or territory thereof under circumstances where that association creates a reasonable belief that the participation of the applicant in any activity required to be licensed or registered under this article would be inimical to the purposes of this article.

§ 234-q. License revocation for certain activity. In addition to the grounds elsewhere set forth in this article any license or registration issued or made pursuant thereto may be revoked or suspended for a period as the division deems in the public interest or the licensee or registrant may be reprimanded, for:

a. conviction of any crime or offense in relation to illegal gambling, bookmaking, or similar crimes or offenses if the crime or offense was committed at or on a pier or other waterfront terminal or within five hundred feet thereof;

b. willful authority of, or willful attempt to commit at or on a waterfront terminal or adjacent highway, any act of physical injury to any other person or of willful damage to or misappropriation of any other person's property, unless justified or excused by law;

c. receipt or solicitation of anything of value from any person other than a licensee's or registrant's employer as consideration for the selection or retention for employment of a licensee or registrant;

d. coercion of a licensee or registrant by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

e. refusal to answer any material question or produce any evidence lawfully required to be answered or produced at any investigation, interview, hearing, or other proceeding conducted by the division pursuant to section two hundred thirty-four-l of this article or, if the refusal is accompanied by a valid plea of privilege against self-incrimination, refusal to obey an order to answer the question or produce any evidence made by the division pursuant to section two hundred thirty-four-l of this article;

f. association with a person who has been identified by a federal, state, or local law enforcement agency as a member or associate of an organized crime group, a terrorist group, or a career offender cartel, or who is a career offender, under circumstances where that association creates a reasonable belief that the participation of the licensee or registrant in any activity required to be licensed or registered under this article would be inimical to the purposes of this article; or

g. conviction of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any state, or territory thereof under circumstances where that association creates a reasonable belief that the participation of the licensee or registrant in any activity required to be licensed or registered by this article would be inimical to the purposes of this article.

§ 234-r. Refusal to cooperate. a. In any investigation, interview, or other proceeding conducted under oath by the division or any duly authorized officer, employee, or agent thereof, if a person refuses to answer a question or produce evidence of any other kind on the ground that the person may be incriminated thereby, and notwithstanding the refusal, an order is made upon twenty-four hours' prior written notice

to the attorney general of the state of New York, and to the appropriate district attorney or prosecutor having an official interest therein, by the superintendent of the division or the superintendent's designee, that the person answer the question or produce the evidence, the person shall comply with the order. If the person complies with the order, and if, but for this section, would have been privileged to withhold the answer given or the evidence produced by the person, then immunity shall be conferred upon the person, as provided for in this section. Immunity shall not be conferred upon any person except in accordance with the provisions of this section. If, after compliance with the provisions of this section, a person is ordered to answer a question or produce evidence of any other kind and complies with the order, and it is thereafter determined that the attorney general or appropriate district attorney or prosecutor having an official interest therein was not notified, that failure or neglect shall not deprive that person of any immunity otherwise properly conferred upon the person. But the person may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order, and any answer given or evidence produced shall be admissible against the person upon any criminal proceeding concerning such perjury or contempt.

b. If a person, in obedience to a subpoena directing the person to attend and testify, is in this state or comes into this state from the state of New York, the person shall not, while in this state pursuant to such subpoena, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the subpoena.

§ 234-s. Suspension pending case outcome. a. The division may temporarily suspend a temporary permit or a permanent license or a temporary or permanent registration issued pursuant to the provisions of this article until further order of the division or final disposition of the underlying case, only where the permittee, licensee, or registrant has been indicted for, or otherwise charged with, a crime which is equivalent to a crime of the third, second, or first degree in this state or only where the permittee or licensee is a port watchman who is charged by the division pursuant to section two hundred thirty-four-k of this article with misappropriating any other person's property at or on a pier or other waterfront terminal.

b. In the case of a permittee, licensee, or registrant who has been indicted for, or otherwise charged with, a crime, the temporary suspension shall terminate immediately upon acquittal or upon dismissal of the criminal charge. A person whose permit, license, or registration has been temporarily suspended may, at any time, demand that the division conduct a hearing as provided for in section two hundred thirty-four-l of this article. Within sixty days of the demand, the division shall commence the hearing and, within thirty days of receipt of the administrative law judge's report and recommendation, the division shall render a final determination thereon; provided, however, that these time requirements shall not apply for any period of delay caused or requested by the permittee, licensee, or registrant. Upon failure of the division to commence a hearing or render a determination within the time limits prescribed herein, the temporary suspension of the permittee, licensee, or registrant shall immediately terminate. Notwithstanding any other provision of this subdivision, if a federal, state, or local law enforcement agency or prosecutor's office shall request the suspension

or deferment of any hearing on the ground that the hearing would obstruct or prejudice an investigation or prosecution, the division may in its discretion, postpone or defer the hearing for a time certain or indefinitely. Any action by the division to postpone a hearing shall be subject to immediate judicial review as provided in this subdivision.

c. The division may, within its discretion, bar any permittee, licensee, or registrant who has been suspended pursuant to the provisions of subdivision a of this section, from any employment by a licensed stevedore or a carrier of freight by water, if that individual has been indicted or otherwise charged in any federal, state, or territorial proceeding with any crime involving the possession with intent to distribute, sale, or distribution of a controlled dangerous substance or controlled dangerous substance analog, racketeering, or theft from a pier or waterfront terminal.

§ 234-t. Cooperation with other entities. The division is authorized to cooperate with the commission, a similar authority, or other public entity of the state of New York, to exchange information on any matter pertinent to the purposes of this article and to enter into reciprocal agreements for the accomplishment of those purposes, including, but not limited to, the following objectives:

a. To provide for the reciprocal recognition of any license issued or registration made by the commission;

b. To give reciprocal effect to any revocation, suspension, or reprimand with respect to any licensee, and any reprimand or removal from a longshoremen's register;

c. To provide that any act or omission by a licensee or registrant in either state which would be a basis for disciplinary action against the licensee or registrant if it occurred in the state in which the license was issued or the person registered shall be the basis for disciplinary action in either state; and

d. To provide that longshoremen registered in either state, who perform work or who apply for work at an employment information center within the other state shall be deemed to have performed work or to have applied for work in the state in which they are registered.

§ 234-u. Preservation of rights. a. The provisions of this article are not designed and shall not be construed to limit in any way any rights granted or derived from any other statute or any rule of law for employees to organize in labor organizations, to bargain collectively and to act in any other way individually, collectively, and through labor organizations or other representatives of their own choosing. Without limiting the generality of the foregoing, nothing contained in this article shall be construed to limit in any way the right of employees to strike.

b. The provisions of this article are not designed and shall not be construed to limit in any way any rights of longshoremen, hiring agents, pier superintendents, or port watchmen or their employers to bargain collectively and agree upon any method for the selection of those employees by way of seniority, experience, regular gangs, or otherwise; provided, that those employees shall be licensed or registered hereunder and longshoremen and port watchmen shall be hired only through the employment information centers established by section two hundred thirty-four-n of this article and that all other provisions of this article be observed.

§ 234-v. Leave, transfer and retirement. a. Any officer or employee in the state, county, or municipal civil service in either state who shall transfer to service with the division may be given one or more leaves of

absence without pay and may, before the expiration of the leave or leaves of absence, and without further examination or qualification, return to the person's former position or be certified by the appropriate civil service agency for retransfer to a comparable position in the state, county, or municipal civil service if a comparable position is then available.

b. The division may, by agreement with any federal agency from which any officer or employee may transfer to service with the division to undertake any of the duties or responsibilities established pursuant to this article make similar provision for the retransfer of the officer or employee to that federal agency.

c. Notwithstanding the provisions of any other law, rule, or regulation, any officer or employee in the state, county, or municipal service in either state who shall transfer to service with the division and who is a member of any existing state, county, or municipal pension or retirement system in New York or New Jersey, shall continue to have all rights, privileges, obligations, and status with respect to that fund, system, or systems as if the person had continued in state, county, or municipal office or employment, but during the period of service as a member, officer, or employee of the division, all contributions to any pension or retirement fund or system to be paid by the employer on account of the member, officer, or employee, shall be paid by the comptroller. The division may, by agreement with the appropriate federal agency, make similar provisions relating to continuance of retirement system membership for any federal officer or employee so transferred.

§ 234-w. Budget. a. The division shall annually adopt a budget of its expenses for each year for the purposes of its duties and responsibilities under this article. Each budget shall be submitted to the governor and the budget shall be adjusted accordingly.

b. After taking into account funds as may be available to the division from reserves, federal grants or otherwise, the balance of the division's budgeted expenses for the performance of its functions and duties under this article shall be assessed upon employers of persons registered or licensed pursuant to this article. Each employer shall pay to the comptroller, for placement within the general fund, an assessment computed upon the gross payroll payments made by that employer to longshoremen, pier superintendents, hiring agents, and port watchmen for work or labor performed within the port of New York district in this state, at a rate, not in excess of two percent, computed by the division in the following manner: the division shall annually estimate the gross payroll payments to be made by employers subject to assessment and shall compute a rate thereon which will yield revenues sufficient to finance the division's budget for the performance of those functions and duties under this article for each year. That budget may include a reasonable amount for a reserve, but the amount shall not exceed ten percent of the total of all other items of expenditure contained therein. The reserve shall be used for the stabilization of annual assessments, the payment of operating deficits, and for the repayment of advances made by the state, if any.

c. The amount required to balance the division's budgeted expenses for the performance of its functions and duties under this article in excess of the estimated yield of the maximum assessment, shall be certified by the division, with the approval of the governor, in proportion to the gross annual wage payments made to longshoremen for work within the port of New York district in this state. The legislature shall annually appropriate to the division the amount so certified.

d. The division may provide by regulation for the collection and auditing of assessments. In addition to any other sanction provided by law, the division may revoke or suspend any license held by any person under this article or the person's privilege of employing persons registered or licensed hereunder, for non-payment of any assessment when due.

e. The assessment hereunder shall be in lieu of any other charge for the issuance of licenses to stevedores, pier superintendents, hiring agents, and port watchmen or for the registration of longshoremen or use of an employment information center. The division shall establish reasonable procedures for the consideration of protests by affected employees concerning the estimates and computation of the rate of assessment.

§ 234-x. Disbursement of budget. a. (1) Every person subject to the payment of any assessment under the provisions of section two hundred thirty-four-w of this article shall file on or before the fifteenth day of the first month of each calendar quarter-year a separate return, together with the payment of the assessment due, for the preceding calendar quarter-year during which any payroll payments were made to longshoremen, pier superintendents, hiring agents, or port watchmen for work performed by those employees within the port of New York district in this state. Returns covering the amount of assessment payable shall be filed with the division on forms to be furnished for that purpose and shall contain data, information, or matter as the division may require to be included therein. The division may grant a reasonable extension of time for filing returns, or for the payment of assessment, whenever good cause exists. Every return shall have annexed thereto a certification to the effect that the statements contained therein are true.

(2) Every person subject to the payment of assessment hereunder shall keep an accurate record of that person's employment of longshoremen, pier superintendents, hiring agents, or port watchmen, which shall show the amount of compensation paid and other information as the division may require. Those records shall be preserved for a period of three years and be open for inspection at reasonable times. The division may consent to the destruction of the records at any time after that period or may require that they be kept longer, but not in excess of six years.

(3) (a) The division shall audit and determine the amount of assessment due from the return filed and such other information as is available to it. Whenever a deficiency in payment of the assessment is determined, the division shall give notice of the determination to the person liable therefor. The determination shall finally and conclusively fix the amount due, unless the person against whom the assessment is assessed shall, within thirty days after the giving of notice of the determination, apply in writing to the division for a hearing, or unless the division on its own motion shall reduce the assessment. After the hearing, the division shall give notice of its decision to the person liable therefor. A determination of the division under this section shall be subject to judicial review, if application for that review is made within thirty days after the giving of notice of the decision. Any determination under this section shall be made within five years from the time the return was filed and if no return was filed, the determination may be made at any time.

(b) Any notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended at the last address that the person shall have given to the division, or in the last return filed with the division under this section, or, if a return has not been filed, then to an address as may be obtainable. The mailing of

the notice shall be presumptive evidence of the receipt of it by the person to whom the notice is addressed. Any period of time, which is determined for the giving of notice shall commence to run from the date of mailing of the notice.

(4) Whenever any person shall fail to pay, within the time limited herein, any assessment which the person is required to pay to the division under the provisions of this section, the division may enforce payment of the assessment by civil action for the amount of the assessment with interest and penalties.

(5) The employment by a nonresident of a longshoreman, or a licensed pier superintendent, hiring agent, or port watchman in this state or the designation by a nonresident of a longshoreman, pier superintendent, hiring agent, or port watchman to perform work in this state shall be deemed equivalent to an appointment by the nonresident of the secretary of state to be the nonresident's true and lawful attorney upon whom may be served the process in any action or proceeding against the nonresident growing out of any liability for assessments, penalties, or interest, and a consent that any process against the nonresident which is served shall be of the same legal force and validity as if served personally within the state and within the territorial jurisdiction of the court from which the process issues. Service of process within the state shall be made by either:

(a) personally delivering to and leaving with the secretary of state duplicate copies thereof at the office of the department of state, in which event the secretary of state shall forthwith send by registered mail one of the copies to the person at the last address designated by the person to the division for any purpose under this section or in the last return filed by the person under this section with the division or as shown on the records of the division, or if no return has been filed, at the person's last known office address within or outside of the state; or

(b) personally delivering to and leaving with the secretary of state a copy thereof at the office of the department of state and by delivering a copy thereof to the person, personally outside of the state. Proof of personal service outside of the state shall be filed with the clerk of the court in which the process is pending within thirty days after that service and the service shall be deemed complete ten days after proof thereof is filed.

(6) Whenever the division shall determine that any monies received as assessments were paid in error, it may cause the same to be refunded, provided an application therefor is filed with the division within two years from the time the erroneous payment was made.

(7) In addition to any other powers authorized hereunder, the division shall have power to make reasonable rules and regulations, pursuant to the provisions of the state administrative procedure act to effectuate the purposes of this section.

(8) Any person who shall willfully fail to pay any assessment due hereunder shall be assessed interest at a rate of one percent per month on the amount due and unpaid and penalties of five percent of the amount due for each thirty days or part thereof that the assessment remains unpaid. The division may, for good cause shown, abate all or part of that penalty.

(9) Any person who shall willfully furnish false or fraudulent information or shall willfully fail to furnish pertinent information, as required, with respect to the amount of assessment due, shall be guilty of a disorderly conduct offense.

(10) All funds of the division received as payment of any assessment or penalty under this section shall be deposited with the comptroller. The comptroller may require that all deposits be secured by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposits, and all banks and trust companies are authorized to give security for the deposits.

(11) The accounts, books, and records of the division related to the purposes established pursuant to this article including its receipts, disbursements, contracts, leases, investments, and any other matters relating to its financial standing shall be examined and audited annually by independent auditors to be retained for such purpose by the division.

b. The division shall reimburse the comptroller for any funds advanced to the division exclusive of sums appropriated pursuant to section two hundred thirty-four-w of this article.

§ 234-y. Unlawful loading and unloading. It shall be unlawful for any person to load or unload waterborne freight onto or from vehicles other than railroad cars at piers or at other waterfront terminals within the port of New York district, for a fee or other compensation, other than the following persons and their employees:

a. carriers of freight by water, but only at piers at which their vessels are berthed;

b. other carriers of freight, including but not limited to, railroads and truckers, but only in connection with freight transported or to be transported by those other carriers;

c. operators of piers or other waterfront terminals, including railroads, truck terminal operators, warehousemen and other persons, but only at piers or other waterfront terminals operated by them;

d. shippers or consignees of freight, but only in connection with freight shipped by the shipper or consigned to the consignee; and

e. stevedores licensed under section two hundred thirty-four-e of this article whether or not waterborne freight has been or is to be transported by a carrier of freight by water with which the stevedore shall have a contract of the type prescribed by paragraph four of subdivision c of section two hundred thirty-four-e of this article.

Nothing contained in this section shall be deemed to permit any loading or unloading of any waterborne freight at any place by any person by means of any independent contractor, or any other agent other than an employee, unless the independent contractor is a person permitted by section two hundred thirty-four-e of this article to load or unload freight at a place in the person's own right.

§ 234-z. Prohibition of certain solicitation. a. A person shall not solicit, collect, or receive any dues, assessments, levies, fines, or contributions, or other charges within the state of New York for or on behalf of any labor organization, which represents employees registered or licensed pursuant to the provisions of this article in their capacities as registered or licensed employees or which derives its charter from a labor organization representing one hundred or more of its registered or licensed employees, if any officer, agent, or employee of the labor organization for which dues, assessments, levies, fines, or contributions, or other charges are solicited, collected, or received, or of a welfare fund or trust administered partially or entirely by the labor organization or by trustees or other persons designated by the labor organization, has been convicted by a court of the United States, or any state or territory thereof, of treason, murder, manslaughter, or any felony, crime involving moral turpitude, or any crime or offense

enumerated in subdivision g of section two hundred thirty-four-d of this article unless that person has been subsequently pardoned therefor by the governor or other appropriate authority of the state in which the conviction was had or has received a certificate of good conduct or other relief from disabilities arising from the fact of conviction from a parole board or similar authority.

b. Any person who shall violate this section shall be guilty of a disorderly conduct violation.

c. Any person who shall violate, aid and abet the violation, or conspire or attempt to violate this section shall be guilty of a disorderly conduct violation.

d. If upon application to the division by an employee who has been convicted of a crime or offense specified in subdivision a of this section, the authority, in its discretion, determines in an order that it would not be contrary to the purposes and objectives of this article for that employee to work in a particular employment for a labor organization, welfare fund, or trust, the provisions of subdivisions a and b of this section shall not apply to the particular employment of the employee with respect to that conviction or convictions as are specified in the division's order. This subdivision is applicable only to those employees, who for wages or salary, perform manual, mechanical, or physical work of a routine or clerical nature at the premises of the labor organization, welfare fund, or trust by which they are employed.

e. A person who has been convicted of a crime or offense specified in subdivision a of this section shall not directly or indirectly serve as an officer, agent, or employee of a labor organization, welfare fund, or trust, unless the person has been subsequently pardoned for that crime or offense by the governor or other appropriate authority of the state in which the conviction was had or has received a certificate of good conduct or other relief from disabilities arising from the fact of conviction from a parole board or similar authority or has received an order of exception from the division. A person, including a labor organization, welfare fund, or trust, shall not knowingly permit any other person to assume or hold any office, agency, or employment in violation of this section.

f. The division may maintain a civil action against any person, labor organization, welfare fund, or trust, or officers thereof to compel compliance with this section, or to prevent any violations, the aiding and abetting thereof, or any attempt or conspiracy to violate this section, either by mandamus, injunction, or action or proceeding in lieu of prerogative writ and upon a proper showing a temporary restraining order or other appropriate temporary order shall be granted ex parte and without bond pending final hearing and determination. Nothing in this subdivision shall be construed to modify, limit, or restrict in any way the provisions of subdivision a of this section.

§ 234-aa. Obstruction of investigation and civil actions. a. Any person who, having been duly sworn or affirmed as a witness in any investigation, interview, hearing or other proceeding conducted by the division pursuant to section two hundred thirty-four-m of this article shall willfully give false testimony shall be guilty of a disorderly conduct offense.

b. The division may maintain a civil action on behalf of the state against any person who violates or attempts or conspires to violate this article or who fails, omits, or neglects to obey, observe, or comply with any order or direction of the division, to recover a judgment for a money penalty not exceeding five hundred dollars for each and every

offense. Every violation of any provision of this article or any division order or direction, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct offense. Any civil action may be compromised or discontinued on application of the division upon the terms as the court may approve and a judgment may be rendered for an amount less than the amount demanded in the complaint as justice may require.

c. The division may maintain a civil action against any person to compel compliance with any of the provisions of this article or to prevent violations, attempts, or conspiracies to violate any provisions of this article or interference, attempts, or conspiracies to interfere with or impede the enforcement of any provisions of this article or the exercise or performance of any power or duty thereunder, either by mandamus, injunction, or action or proceeding in lieu of prerogative writ.

d. Any person who shall violate any of the provisions of this article for which no other penalty is prescribed, shall be guilty of a disorderly conduct offense.

e. Any person who shall, without a satisfactory explanation, loiter upon any vessel, dock, wharf, pier, bulkhead, terminal, warehouse, or other waterfront facility or within five hundred feet thereof in that portion of the port of New York district in this state, shall be guilty of a disorderly conduct offense.

f. Any person who, without justification or excuse in law, directly or indirectly, intimidates or inflicts any injury, damage, harm, loss, or economic reprisal upon any person licensed or registered by the division, or any other person, or attempts, conspires, or threatens so to do, in order to interfere with, impede, or influence the licensed or registered person in the performance or discharge of the licensed or registered person's duties or obligations shall be punishable as provided in this section.

§ 234-bb. Failure to give testimony, false testimony. a. The failure of any witness, when duly subpoenaed to attend, give testimony, or produce other evidence in connection with any matter arising under the provisions of this article whether or not at a hearing, shall be punishable by a court in the same manner as that failure is punishable by the court in a case therein pending.

b. Any person who, having been sworn or affirmed as a witness in any hearing pursuant to subdivision a of this section, shall willfully give false testimony or who shall willfully make or file any false or fraudulent report or statement required by this article to be made or filed under oath, shall be guilty of a disorderly conduct offense.

c. Any person who violates or attempts or conspires to violate any other provision of this article shall be punishable as provided by section two hundred thirty-four-z of this article.

d. Any person who interferes with or impedes the orderly registration of longshoremen pursuant to this article or who conspires to or attempts to interfere with or impede such registration shall be punishable as provided by section two hundred thirty-four-z of this article.

e. Any person who, directly or indirectly, inflicts or threatens to inflict any injury, damage, harm, or loss or in any other manner practices intimidation upon or against any person in order to induce or compel such person or any other person to refrain from registering pursuant to section two hundred thirty-four-f of this article shall be

punishable as may be provided by section two hundred thirty-four-z of this article.

f. In any prosecution under this section, it shall be sufficient to prove only a single act, or a single holding out or attempt, prohibited by law, without having to prove a general course of conduct, in order to prove a violation.

§ 234-cc. Dissolution of commission. As of the transfer date, the waterfront commission compact, entered into by the state of New York pursuant to its agreement thereto under chapter 882 of the laws of 1953, and chapter 202 of the laws of New Jersey of 1953, as amended and supplemented, the airport commission compact, entered into by the state of New York pursuant to its agreement thereto under chapter 951 of the laws of 1970 and chapter 58 of the laws of New Jersey of 1970, and the commission, are dissolved.

§ 2. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; provided that the governor shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section one of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.