

# Union Calendar No. 431

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5909

[Report No. 110-687]

To amend the Aviation and Transportation Security Act to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2008

Mrs. LOWEY introduced the following bill; which was referred to the Committee on Homeland Security

JUNE 5, 2008

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 24, 2008]

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## A BILL

To amend the Aviation and Transportation Security Act to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Catching Operational*  
5 *Vulnerabilities by Ensuring Random Testing Act of 2008”*  
6 *or the “COVERT Act of 2008”.*

7 **SEC. 2. PROHIBITION OF ADVANCE NOTICE OF COVERT**  
8 **TESTING TO SECURITY SCREENERS.**

9 *Section 111 of the Aviation and Transportation Secu-*  
10 *rity Act (Public Law 107–71; 49 U.S.C. 44935 note) is*  
11 *amended—*

12 *(1) by striking the section enumerator and head-*  
13 *ing and inserting the following:*

14 **“SEC. 111. TRAINING, EMPLOYMENT, AND TESTING OF SE-**  
15 **CURITY SCREENING PERSONNEL.”; and**

16 *(2) by adding at the end the following:*

17 **“(e) PROHIBITION OF ADVANCE NOTICE TO SECURITY**  
18 **SCREENERS OF COVERT TESTING AND EVALUATION.—**

19 *“(1) IN GENERAL.—The Secretary of Homeland*  
20 *Security shall ensure that information concerning a*  
21 *covert test of a transportation security system to be*  
22 *conducted by a covert testing office, the Inspector*  
23 *General of the Department of Homeland Security, or*  
24 *the Government Accountability Office is not provided*  
25 *to any individual prior to the completion of the test.*

1           “(2) *EXCEPTIONS.*—*Notwithstanding paragraph*  
2           (1)—

3                   “(A) *an individual may provide informa-*  
4                   *tion concerning a covert test of a transportation*  
5                   *security system to employees, officers, and con-*  
6                   *tractors of the Federal Government (including*  
7                   *military personnel); employees and officers of*  
8                   *State and local governments; and law enforce-*  
9                   *ment officials, who are authorized to receive or*  
10                   *directed to be provided such information by the*  
11                   *Assistant Secretary of Homeland Security*  
12                   *(Transportation Security Administration), the*  
13                   *Inspector General of the Department of Home-*  
14                   *land Security, or the Comptroller General of the*  
15                   *United States, as the case may be; and*

16                   “(B) *for the purpose of ensuring the secu-*  
17                   *rity of any individual in the vicinity of a site*  
18                   *where a covert test of a transportation security*  
19                   *system is being conducted, an individual con-*  
20                   *ducting the test may disclose his or her status as*  
21                   *an individual conducting the test to any appro-*  
22                   *priate individual if a security screener or other*  
23                   *individual who is not a covered employee identi-*  
24                   *fies the individual conducting the test as a po-*  
25                   *tential threat.*

1           “(3) *SPECIAL RULES FOR THE TRANSPORTATION*  
2           *SECURITY ADMINISTRATION.*—

3           “(A) *MONITORING AND SECURITY OF TEST-*  
4           *ING PERSONNEL.*—*The head of each covert test-*  
5           *ing office shall ensure that a person or group of*  
6           *persons conducting a covert test of a transpor-*  
7           *tation security system for the covert testing office*  
8           *is accompanied at the site of the test by a cover*  
9           *team comprised of one or more employees of the*  
10           *covert testing office for the purpose of monitoring*  
11           *the test and confirming the identity of personnel*  
12           *involved in the test under subparagraph (B).*

13           “(B) *RESPONSIBILITY OF COVER TEAM.*—  
14           *Under this paragraph, a cover team for a covert*  
15           *test of a transportation security system shall—*

16           “(i) *monitor the test; and*

17           “(ii) *for the purpose of ensuring the se-*  
18           *curity of any individual in the vicinity of*  
19           *a site where the test is being conducted, con-*  
20           *firm, notwithstanding paragraph (1), the*  
21           *identity of any individual conducting the*  
22           *test to any appropriate individual if a secu-*  
23           *rity screener or other individual who is not*  
24           *a covered employee identifies the individual*  
25           *conducting the test as a potential threat.*

1           “(C) *AVIATION SCREENING.*—*Notwith-*  
2           *standing subparagraph (A), the Transportation*  
3           *Security Administration is not required to have*  
4           *a cover team present during a test of the screen-*  
5           *ing of persons, carry-on items, or checked bag-*  
6           *gage at an aviation security checkpoint at or*  
7           *servicing an airport if the test—*

8                     “(i) *is approved by the Federal Secu-*  
9                     *rity Director for such airport; and*

10                    “(ii) *is carried out under an aviation*  
11                    *screening assessment program of the De-*  
12                    *partment of Homeland Security.*

13           “(D) *USE OF OTHER PERSONNEL.*—*The*  
14           *Transportation Security Administration may*  
15           *use employees, officers, and contractors of the*  
16           *Federal Government (including military per-*  
17           *sonnel) and employees and officers of State and*  
18           *local governments to conduct covert tests.*

19           “(4) *IMPACT STUDY AND REPORT ON COVERT*  
20           *TESTING PROCEDURES.*—

21                    “(A) *IMPACT STUDY.*—*The Secretary of*  
22                    *Homeland Security shall conduct a study of the*  
23                    *impact of the implementation of this subsection*  
24                    *on the Department of Homeland Security’s ef-*  
25                    *forts to improve transportation security.*

1           “(B) *REQUIREMENTS.*—*The study under*  
2           *subparagraph (A) shall include an assessment*  
3           *of—*

4                     “(i) *the impact of the implementation*  
5                     *of this subsection on personnel of the De-*  
6                     *partment of Homeland Security;*

7                     “(ii) *the impact of such implementa-*  
8                     *tion on information sharing within the De-*  
9                     *partment;*

10                    “(iii) *best practices for integrating the*  
11                    *topic of covert testing into existing training*  
12                    *and testing programs for personnel of the*  
13                    *Department; and*

14                    “(iv) *the effectiveness of covert testing*  
15                    *as a method to improve security.*

16           “(C) *REPORT.*—*Not later than 270 days*  
17           *after the date of the enactment of this subsection,*  
18           *the Secretary shall submit to the Committee on*  
19           *Homeland Security of the House of Representa-*  
20           *tives and the Committee on Homeland Security*  
21           *and Governmental Affairs of the Senate a report*  
22           *that contains—*

23                    “(i) *the results of the study under sub-*  
24                    *paragraph (A);*

1           “(ii) recommendations for changes to  
2           the training of personnel of the Department  
3           that are necessary to ensure compliance  
4           with the requirements of this subsection;  
5           and

6           “(iii) recommendations to improve the  
7           effectiveness of the implementation of this  
8           subsection.

9           “(5) *DEFINITIONS.*—For purposes of this sub-  
10          section, the following definitions apply:

11           “(A) *APPROPRIATE INDIVIDUAL.*—The term  
12          ‘appropriate individual’, as used with respect to  
13          a covert test of a transportation security system,  
14          means any individual that—

15           “(i) the individual conducting the test  
16          determines needs to know his or her status  
17          as an individual conducting a test under  
18          paragraph (2)(B); or

19           “(ii) the cover team monitoring the test  
20          under paragraph (3)(B)(i) determines needs  
21          to know the identity of an individual con-  
22          ducting the test.

23           “(B) *COVERED EMPLOYEE.*—The term ‘cov-  
24          ered employee’ means any individual who re-

1 *ceives notice of a covert test before the completion*  
2 *of a test under paragraph (2)(A).*

3 *“(C) COVERT TEST.—*

4 *“(i) IN GENERAL.—The term ‘covert*  
5 *test’ means an exercise or activity conducted*  
6 *by a covert testing office, the Inspector Gen-*  
7 *eral of the Department of Homeland Secu-*  
8 *rity, or the Government Accountability Of-*  
9 *fice to intentionally test, compromise, or*  
10 *circumvent transportation security systems*  
11 *to identify vulnerabilities in such systems.*

12 *“(ii) LIMITATION.—Notwithstanding*  
13 *clause (i), the term ‘covert test’ does not*  
14 *mean an exercise or activity by an em-*  
15 *ployee or contractor of the Transportation*  
16 *Security Administration to test or assess*  
17 *compliance with regulations under title 49*  
18 *of the Code of Federal Regulations.*

19 *“(D) COVERT TESTING OFFICE.—The term*  
20 *‘covert testing office’ means any office of the*  
21 *Transportation Security Administration des-*  
22 *ignated by the Assistant Secretary of Homeland*  
23 *Security (Transportation Security Administra-*  
24 *tion) to conduct covert tests of transportation se-*  
25 *curity systems.*



1                   “(E) *EMPLOYEE OF A COVERT TESTING OF-*  
2                   *FICE.—The term ‘employee of a covert testing of-*  
3                   *fice’ means an individual who is an employee of*  
4                   *a covert testing office or a contractor or an em-*  
5                   *ployee of a contractor of a covert testing office.”.*

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