

111TH CONGRESS
1ST SESSION

S. 1113

To amend title 49, United States Code, to direct the Secretary of Transportation to establish and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2009

Mr. PRYOR (for himself, Ms. SNOWE, Mr. NELSON of Nebraska, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to direct the Secretary of Transportation to establish and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators, 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 “Safe Roads Act of
5 2009”.

1 **SEC. 2. NATIONAL CLEARINGHOUSE FOR POSITIVE ALCO-**
 2 **HOL AND CONTROLLED SUBSTANCE TEST RE-**
 3 **SULTS OF COMMERCIAL MOTOR VEHICLE OP-**
 4 **ERATORS.**

5 (a) IN GENERAL.—Chapter 313 of title 49, United
 6 States Code, is amended—

7 (1) in section 31306(a), by inserting “and sec-
 8 tion 31306a” after “this section”; and

9 (2) by inserting after section 31306 the fol-
 10 lowing:

11 **“§ 31306a. National clearinghouse for positive con-**
 12 **trolled substance and alcohol test results**
 13 **of commercial motor vehicle operators**

14 “(a) ESTABLISHMENT.—

15 “(1) IN GENERAL.—Not later than 2 years
 16 after the date of the enactment of the Safe Roads
 17 Act of 2009, the Secretary of Transportation (re-
 18 ferred to in this section as the ‘Secretary’) shall es-
 19 tablish a national clearinghouse for records relating
 20 to alcohol and controlled substances testing of com-
 21 mercial motor vehicle operators.

22 “(2) PURPOSES.—The purposes of the clearing-
 23 house shall be—

24 “(A) to improve compliance with the De-
 25 partment of Transportation’s alcohol and con-

1 trolled substance testing program applicable to
2 commercial motor vehicle operators;

3 “(B) to facilitate access to information
4 about an individual before employing the indi-
5 vidual as a commercial motor vehicle operator;

6 “(C) to enhance the safety of our Nation’s
7 roadways; and

8 “(D) to reduce accidents and fatalities in-
9 volving commercial motor vehicles.

10 “(3) CONTENTS.—The clearinghouse shall func-
11 tion as a repository for records relating to the
12 verified positive test results and test refusals of com-
13 mercial motor vehicle operators.

14 “(4) ELECTRONIC EXCHANGE OF RECORDS.—
15 The Secretary shall ensure that records can be elec-
16 tronically submitted to, and requested from, the
17 clearinghouse by authorized users.

18 “(b) DESIGN OF CLEARINGHOUSE.—

19 “(1) USE OF FEDERAL MOTOR CARRIER SAFETY
20 ADMINISTRATION RECOMMENDATIONS.—In estab-
21 lishing the clearinghouse, the Secretary shall con-
22 sider—

23 “(A) the findings and recommendations
24 contained in the Federal Motor Carrier Safety
25 Administration’s March 2004 report to Con-

1 gress required under section 226 of the Motor
2 Carrier Safety Improvement Act of 1999 (Pub-
3 lic Law 106–159); and

4 “(B) the findings and recommendations
5 contained in the Government Accountability Of-
6 fice’s May 2008 report to Congress entitled
7 ‘Motor Carrier Safety: Improvements to Drug
8 Testing Programs Could Better Identify Illegal
9 Drug Users and Keep Them off the Road.’

10 “(2) DEVELOPMENT OF SECURE PROCESSES.—

11 In establishing the clearinghouse, the Secretary shall
12 develop a secure process for—

13 “(A) administering and managing the
14 clearinghouse in compliance with all applicable
15 Federal security standards;

16 “(B) registering and authenticating au-
17 thorized users of the clearinghouse;

18 “(C) registering and authenticating indi-
19 viduals required to report to the clearinghouse
20 under subsection (g);

21 “(D) preventing the unauthorized access of
22 information from the clearinghouse;

23 “(E) storing and transmitting data;

24 “(F) individuals required to report to the
25 clearinghouse under subsection (g) to timely

1 and accurately submit electronic data to the
2 clearinghouse;

3 “(G) generating timely and accurate re-
4 ports from the clearinghouse in response to re-
5 quests for information by authorized users; and

6 “(H) updating an individual’s record upon
7 completion of the return-to-duty process de-
8 scribed in title 49, Code of Federal Regulations.

9 “(3) EMPLOYER ALERT OF POSITIVE TEST RE-
10 SULT.—In establishing the clearinghouse, the Sec-
11 retary shall consider developing a secure method for
12 electronically notifying an employer of any additional
13 positive test results or test refusals for an individual
14 that are entered into the clearinghouse during the 7-
15 day period immediately following an employer’s in-
16 quiry about such individual.

17 “(4) ARCHIVE CAPABILITY.—In establishing the
18 clearinghouse, the Secretary shall develop a process
19 for archiving all clearinghouse records, including the
20 depositing of personal records, records relating to
21 each individual in the database, and access requests
22 for personal records, for the purposes of—

23 “(A) auditing and evaluating the timeli-
24 ness, accuracy, and completeness of data in the
25 clearinghouse; and

1 “(B) auditing to monitor compliance and
2 enforce penalties for noncompliance.

3 “(5) FUTURE NEEDS.—

4 “(A) INTEROPERABILITY WITH OTHER
5 DATA SYSTEMS.—In establishing the clearing-
6 house, the Secretary shall consider—

7 “(i) the existing data systems con-
8 taining regulatory and safety data for com-
9 mercial motor vehicle operators;

10 “(ii) the efficacy of using or com-
11 bining clearinghouse data with 1 or more
12 of such systems; and

13 “(iii) the potential interoperability of
14 the clearinghouse with such systems.

15 “(B) SPECIFIC CONSIDERATIONS.—In car-
16 rying out subparagraph (A), the Secretary shall
17 determine—

18 “(i) the clearinghouse’s capability for
19 interoperability with—

20 “(I) the National Driver Register
21 established under section 30302;

22 “(II) the Commercial Driver’s Li-
23 cense Information System established
24 under section 31309; and

1 “(III) other data systems, as ap-
2 propriate; and

3 “(ii) any changes to the administra-
4 tion of the current testing program, such
5 as forms, that are necessary to collect data
6 for the clearinghouse.

7 “(c) STANDARD FORMS.—The Secretary shall de-
8 velop standard forms to be used—

9 “(1) by employers and other authorized users of
10 the clearinghouse to—

11 “(A) request records from the clearing-
12 house; and

13 “(B) obtain the consent of each individual
14 who is the subject of a request from the clear-
15 inghouse; and

16 “(2) to notify individuals that positive alcohol
17 and controlled substances test results and refusals to
18 test will be reported to the clearinghouse.

19 “(d) PRIVACY.—Information may not be released
20 from the clearinghouse unless such release complies with
21 all applicable Federal privacy laws and regulations, includ-
22 ing the Health Insurance Portability and Accountability
23 Act of 1996 (Public Law 104–191) and fair information
24 practices under the Privacy Act of 1974 (5 U.S.C. 552a).

25 “(e) FEES.—

1 “(1) AUTHORITY TO COLLECT FEES.—Except
2 as provided under paragraph (3), the Secretary may
3 collect reasonable, customary, and nominal fees from
4 employers and other authorized users of the clear-
5 inghouse for requests for information from the clear-
6 inghouse.

7 “(2) USE OF FEES.—Fees collected under this
8 subsection shall be used for the operation and main-
9 tenance of the clearinghouse.

10 “(3) LIMITATION.—The Secretary may not col-
11 lect a fee from any individual requesting information
12 from the clearinghouse that pertains to the record of
13 the individual.

14 “(f) EMPLOYER REQUIREMENTS.—

15 “(1) DETERMINATION CONCERNING USE OF
16 CLEARINGHOUSE.—The Secretary shall determine
17 which commercial motor carrier employers are au-
18 thorized to use the clearinghouse to meet the alcohol
19 and controlled substances testing requirements
20 under title 49, Code of Federal Regulations.

21 “(2) APPLICABILITY OF EXISTING REQUIRE-
22 MENTS.—Each commercial motor carrier employer
23 shall comply with the alcohol and controlled sub-
24 stances testing requirements under title 49, Code of
25 Federal Regulations.

1 “(3) EMPLOYMENT PROHIBITIONS.—A commer-
2 cial motor carrier employer shall not hire an indi-
3 vidual to operate a commercial motor vehicle unless
4 the employer has determined that the individual,
5 during the preceding 3-year period—

6 “(A) has been tested for the use of alcohol
7 and controlled substances, as required under
8 title 49, Code of Federal Regulations;

9 “(B)(i) has not tested positive for the use
10 of alcohol or controlled substances in violation
11 of such regulations; or

12 “(ii) has tested positive for the use of alco-
13 hol or controlled substances and has completed
14 the required return-to-duty process described in
15 title 49, Code of Federal Regulations; and

16 “(C) has not refused to take the alcohol or
17 controlled substance tests required under title
18 49, Code of Federal Regulations.

19 “(g) REPORTING OF RECORDS.—

20 “(1) IN GENERAL.—Medical review officers, em-
21 ployers, service agents, and other appropriate per-
22 sons, as determined by the Secretary, shall promptly
23 submit to the Secretary records in their possession
24 of any individual who—

1 “(A) has refused to take an alcohol or con-
2 trolled substance test required under title 49,
3 Code of Federal Regulations; or

4 “(B) has tested positive for alcohol or a
5 controlled substance in violation of such regula-
6 tions.

7 “(2) INCLUSION OF RECORDS IN CLEARING-
8 HOUSE.—The Secretary shall include in the clearing-
9 house all records of positive test results and test re-
10 fusals received pursuant to paragraph (1).

11 “(3) MODIFICATIONS AND DELETIONS.—If the
12 Secretary determines that a record contained in the
13 clearinghouse is not accurate, the Secretary shall
14 modify or delete the record, as appropriate.

15 “(4) NOTIFICATION.—The Secretary shall expedi-
16 tiously notify an individual when—

17 “(A) a record relating to the individual is
18 submitted to the clearinghouse;

19 “(B) any record in the clearinghouse relat-
20 ing to the individual is modified or deleted, and
21 include in such notification the reason for such
22 modification or deletion; or

23 “(C) any record in the clearinghouse relat-
24 ing to the individual is released to an employer

1 and shall include in such notification the reason
2 for such a release.

3 “(5) DATA QUALITY AND SECURITY STANDARDS
4 FOR REPORTING AND RELEASING.—The Secretary
5 may establish additional requirements, as appro-
6 priate, to ensure that—

7 “(A) the submission of records to the
8 clearinghouse is timely and accurate;

9 “(B) the release of data from the clearing-
10 house is timely, accurate, and released to the
11 appropriate individual, employer, or State li-
12 censing official; and

13 “(C) the individuals with records in the
14 clearinghouse have a cause of action for the in-
15 appropriate use of information included in the
16 clearinghouse.

17 “(6) RETENTION OF RECORDS.—The Secretary
18 shall—

19 “(A) retain all the records submitted to
20 the clearinghouse during the 5-year period be-
21 ginning on the date on which such records are
22 submitted;

23 “(B) remove such records from the clear-
24 inghouse at the end of such 5-year period, un-
25 less the individual has not met required return-

1 to-duty requirements under title 49, Code of
2 Federal Regulations; and

3 “(C) retain records beyond the end of such
4 5-year period in a separate location for
5 archiving and auditing purposes.

6 “(h) ACCESS TO CLEARINGHOUSE BY EMPLOYERS.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish a process to require employers to request and
9 review any records in the clearinghouse pertaining to
10 an individual before employing the individual.

11 “(2) CONSENT REQUIREMENT.—An employer
12 may not be granted access to any records in the
13 clearinghouse pertaining to an individual until after
14 the employer—

15 “(A) obtains the prior written or electronic
16 consent of the individual for access to such
17 records; and

18 “(B) submits proof of such consent to the
19 Secretary.

20 “(3) ACCESS TO RECORDS.—Upon receiving
21 from an employer a request, in compliance with
22 paragraph (2), for records in the clearinghouse per-
23 taining to an individual, the Secretary shall provide
24 access to the records to the employer as expedi-
25 tiously as practicable.

1 “(4) RETENTION OF RECORD REQUESTS.—The
2 Secretary shall require employers to retain, for a 3-
3 year period—

4 “(A) a record of each request made by the
5 employer for records from the clearinghouse;
6 and

7 “(B) any information received pursuant to
8 such request.

9 “(5) USE OF RECORDS.—

10 “(A) IN GENERAL.—An employer may use
11 a record of an individual received from the
12 clearinghouse only to assess and evaluate the
13 qualifications of the individual to operate a
14 commercial motor vehicle for such employer.

15 “(B) PROTECTION OR PRIVACY OF INDI-
16 VIDUALS.—An employer that receives a record
17 from the clearinghouse pertaining to an indi-
18 vidual shall—

19 “(i) protect the privacy of the indi-
20 vidual and the confidentiality of the record;
21 and

22 “(ii) ensure that information con-
23 tained in the record is not divulged to any
24 person or entity who is not directly in-
25 volved in assessing and evaluating the

1 qualifications of the individual to operate a
2 commercial motor vehicle for the employer
3 receiving the record.

4 “(i) ACCESS TO CLEARINGHOUSE BY INDIVIDUALS.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish a process by which any individual may request
7 and receive information from the clearinghouse—

8 “(A) to determine whether the clearing-
9 house contains a record pertaining to the indi-
10 vidual;

11 “(B) to verify the accuracy of such record;

12 “(C) to update an individual’s record, in-
13 cluding completing the return-to-duty process
14 described in title 49, Code of Federal Regula-
15 tions; and

16 “(D) to determine whether the clearing-
17 house has received requests for information re-
18 garding the individual.

19 “(2) DISPUTE PROCEDURE.—The Secretary
20 shall establish a procedure, including an appeal
21 process, for any individual to dispute and remedy
22 administrative errors contained in a record in the
23 clearinghouse that pertains to such individual.

24 “(j) ACCESS TO CLEARINGHOUSE BY STATE LICENS-
25 ING AUTHORITIES.—

1 “(1) IN GENERAL.—The Secretary shall estab-
2 lish a process by which the chief commercial driver’s
3 licensing official of a State may request and receive
4 records from the clearinghouse that pertain to an in-
5 dividual applying for a commercial driver’s license
6 from such State.

7 “(2) IMPLIED CONSENT.—The chief commercial
8 driver licensing official of a State may be granted
9 access to any records in the clearinghouse pertaining
10 to an individual without obtaining the prior written
11 or electronic consent of the individual and submit-
12 ting proof of such consent. Any individual who holds
13 a commercial driver’s license shall be deemed to have
14 consented to such access. Consent is implied by ob-
15 taining a commercial driver’s license from the State
16 and by driving a commercial motor vehicle.

17 “(3) PROTECTION OF PRIVACY OF INDIVID-
18 UALS.—If the chief commercial driver licensing offi-
19 cial of a State receives a record from the clearing-
20 house pertaining to an individual, the official shall—

21 “(A) protect the privacy of the individual
22 and the confidentiality of record; and

23 “(B) ensure that information contained in
24 the record is not divulged to any person within
25 or outside the State government who is not di-

1 rectly involved in assessing and evaluating the
2 qualifications of the individual to operate a
3 commercial motor vehicle.

4 “(k) PENALTIES.—An employer, employee, medical
5 review officer, or service agent who violates any provision
6 of this section or section 3 of the Safe Roads Act of 2009
7 shall be subject to the civil and criminal penalties de-
8 scribed in section 521(b) of title 49, United States Code,
9 and other applicable civil and criminal penalties, as deter-
10 mined by the Secretary.

11 “(l) COMPATIBILITY OF STATE AND LOCAL LAWS.—

12 “(1) PREEMPTION.—Except as provided under
13 paragraph (2), any law, regulation, order, or other
14 requirement of a State, political subdivision of a
15 State, or Indian tribe related to commercial driver’s
16 license holders subject to alcohol or controlled sub-
17 stance testing under title 49, Code of Federal Regu-
18 lations, which is inconsistent with the requirements
19 under this section or any regulation issued pursuant
20 to the authority of this section is preempted.

21 “(2) APPLICABILITY.—The preemption under
22 paragraph (1) shall apply to—

23 “(A) the reporting of valid positive results
24 from alcohol screening tests and drug tests; and

1 “(B) the refusal to provide a specimen for
2 an alcohol screening test or drug test.

3 “(3) EXCEPTION.—A law, regulation, order, or
4 other requirement of a State, political subdivision of
5 a State, or Indian tribe shall not be preempted
6 under this subsection to the extent it relates to ac-
7 tions taken with respect to a commercial motor vehi-
8 cle operator’s commercial driver’s license or driving
9 record as a result of such driver’s—

10 “(A) verified positive alcohol or drug test
11 result; or

12 “(B) refusal to provide a specimen for the
13 test.

14 “(m) DEFINITIONS.—In this section:

15 “(1) AUTHORIZED USERS.—The term ‘author-
16 ized users’ means employers, State licensing authori-
17 ties, and other individuals granted access to the
18 clearinghouse.

19 “(2) CHIEF DRIVER LICENSING OFFICIAL.—The
20 term ‘chief commercial driver’s licensing official’
21 means the official in a State who is authorized to—

22 “(A) maintain a record about commercial
23 driver’s licenses issued by the State; and

24 “(B) take action on commercial driver’s li-
25 censes issued by the State.

1 “(3) CLEARINGHOUSE.—The term ‘clearing-
2 house’ means the clearinghouse established under
3 subsection (a).

4 “(4) COMMERCIAL MOTOR VEHICLE OPER-
5 ATOR.—The term ‘commercial motor vehicle oper-
6 ator’ means an individual who is—

7 “(A) in possession of a valid commercial
8 driver’s license issued in accordance with sec-
9 tion 31308; and

10 “(B) subject to controlled substances and
11 alcohol testing under title 49, Code of Federal
12 Regulations.

13 “(5) EMPLOYER.—The term ‘employer’ means
14 a person or entity employing, or seeking to employ,
15 1 or more employees (including an individual who is
16 self-employed) to be commercial motor vehicle opera-
17 tors.

18 “(6) MEDICAL REVIEW OFFICER.—The term
19 ‘medical review officer’ means a licensed physician
20 who is responsible for—

21 “(A) receiving and reviewing laboratory re-
22 sults generated under the testing program; and

23 “(B) evaluating medical explanations for
24 alcohol and controlled substances tests required
25 under title 49, Code of Federal Regulations.

1 “(7) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Transportation.

3 “(8) SERVICE AGENT.—The term ‘service
4 agent’ means a person or entity, other than an em-
5 ployee of the employer, who provides services to em-
6 ployers or employees under the testing program.

7 “(9) TESTING PROGRAM.—The term ‘testing
8 program’ means the alcohol and controlled sub-
9 stances testing program required under title 49,
10 Code of Federal Regulations.”.

11 (b) CONFORMING AMENDMENT.—The analysis for
12 chapter 313 of title 49, United States Code, is amended
13 by inserting after the item relating to section 31306 the
14 following:

“31306a. National clearinghouse for positive controlled substance and alcohol
test results of commercial motor vehicle operators.”.

15 **SEC. 3. ENHANCED OVERSIGHT OF COLLECTION SITES.**

16 The Secretary of Transportation shall—

17 (1) require each site at which urine is collected
18 for alcohol and controlled substances tests under
19 title 49, Code of Federal Regulation, to register with
20 the Department of Transportation;

21 (2) publish an annual list of registered collec-
22 tion sites in the Federal Register and make such list
23 available to the public;

1 (3) ensure that no collection site is included on
2 the list described in paragraph (2) unless the site
3 submits an annual certification to the Secretary that
4 the site meets each of the applicable requirements
5 under title 49, Code of Federal Regulations; and

6 (4) develop an instrument for the certification
7 under paragraph (3) that requires a positive re-
8 sponse to each applicable requirement, including an
9 explanation of the penalties imposed for making
10 false statements.

11 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) IN GENERAL.—There are authorized to be appro-
13 priated, in fiscal year 2010 and in each subsequent fiscal
14 year, such sums as may be necessary to establish, operate,
15 and maintain the national clearinghouse for positive alco-
16 hol and controlled substance test results of commercial
17 motor vehicle operators in accordance with section 31306a
18 of title 49, United States Code, as added by section 2.

19 (b) ADDITIONAL FUNDING AUTHORITY.—From the
20 funds authorized to be appropriated under section
21 31104(i) of title 49, United States Code, up to \$5,000,000
22 is authorized to be appropriated from the Highway Trust
23 Fund (other than the Mass Transit Account) for the Sec-
24 retary of Transportation to develop, design, and imple-
25 ment the national clearinghouse if the Secretary deter-

1 mines that the amounts appropriated by Congress are in-
2 adequate for such purposes.

3 (c) REPORT TO CONGRESS.—The Secretary of Trans-
4 portation may not use any of the amounts appropriated
5 pursuant to subsection (b) until after the Secretary sub-
6 mits a report to Congress that explains the need for such
7 amounts.

○