

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

# H. R. 5909

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## AN ACT

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  
13 heading 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 SECU-**  
18 **RITY SCREENERS OF COVERT TESTING AND EVALUA-**  
19 **TION.—**

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

1 vided to any individual prior to the completion of the  
2 test.

3 “(2) EXCEPTIONS.—Notwithstanding para-  
4 graph (1)—

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

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

1 identifies the individual conducting the test as  
2 a potential threat.

3 “(3) SPECIAL RULES FOR THE TRANSPOR-  
4 TATION SECURITY ADMINISTRATION.—

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

16 “(B) RESPONSIBILITY OF COVER TEAM.—  
17 Under this paragraph, a cover team for a covert  
18 test of a transportation security system shall—

19 “(i) monitor the test; and

20 “(ii) for the purpose of ensuring the  
21 security of any individual in the vicinity of  
22 a site where the test is being conducted,  
23 confirm, notwithstanding paragraph (1),  
24 the identity of any individual conducting  
25 the test to any appropriate individual if a

1 security screener or other individual who is  
2 not a covered employee identifies the indi-  
3 vidual conducting the test as a potential  
4 threat.

5 “(C) AVIATION SCREENING.—Notwith-  
6 standing subparagraph (A), the Transportation  
7 Security Administration is not required to have  
8 a cover team present during a test of the  
9 screening of persons, carry-on items, or checked  
10 baggage at an aviation security checkpoint at or  
11 serving an airport if the test—

12 “(i) is approved by the Federal Secu-  
13 rity Director for such airport; and

14 “(ii) is carried out under an aviation  
15 screening assessment program of the De-  
16 partment of Homeland Security.

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

23 “(4) IMPACT STUDY AND REPORT ON COVERT  
24 TESTING PROCEDURES.—

1           “(A) **IMPACT STUDY.**—The Secretary of  
2 Homeland Security shall conduct a study of the  
3 impact of the implementation of this subsection  
4 on the Department of Homeland Security’s ef-  
5 forts to improve transportation security.

6           “(B) **REQUIREMENTS.**—The study under  
7 subparagraph (A) shall include an assessment  
8 of—

9                   “(i) the impact of the implementation  
10 of this subsection on personnel of the De-  
11 partment of Homeland Security;

12                   “(ii) the impact of such implementa-  
13 tion on information sharing within the De-  
14 partment;

15                   “(iii) best practices for integrating the  
16 topic of covert testing into existing training  
17 and testing programs for personnel of the  
18 Department; and

19                   “(iv) the effectiveness of covert testing  
20 as a method to improve security.

21           “(C) **REPORT.**—Not later than 270 days  
22 after the date of the enactment of this sub-  
23 section, the Secretary shall submit to the Com-  
24 mittee on Homeland Security of the House of  
25 Representatives and the Committee on Home-

1 land Security and Governmental Affairs of the  
2 Senate a report that contains—

3 “(i) the results of the study under  
4 subparagraph (A);

5 “(ii) recommendations for changes to  
6 the training of personnel of the Depart-  
7 ment that are necessary to ensure compli-  
8 ance with the requirements of this sub-  
9 section; and

10 “(iii) recommendations to improve the  
11 effectiveness of the implementation of this  
12 subsection.

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

15 “(A) APPROPRIATE INDIVIDUAL.—The  
16 term ‘appropriate individual’, as used with re-  
17 spect to a covert test of a transportation secu-  
18 rity system, means any individual that—

19 “(i) the individual conducting the test  
20 determines needs to know his or her status  
21 as an individual conducting a test under  
22 paragraph (2)(B); or

23 “(ii) the cover team monitoring the  
24 test under paragraph (3)(B)(i) determines

1 needs to know the identity of an individual  
2 conducting the test.

3 “(B) COVERED EMPLOYEE.—The term  
4 ‘covered employee’ means any individual who  
5 receives notice of a covert test before the com-  
6 pletion of a test under paragraph (2)(A).

7 “(C) COVERT TEST.—

8 “(i) IN GENERAL.—The term ‘covert  
9 test’ means an exercise or activity con-  
10 ducted by a covert testing office, the In-  
11 spector General of the Department of  
12 Homeland Security, or the Government Ac-  
13 countability Office to intentionally test,  
14 compromise, or circumvent transportation  
15 security systems to identify vulnerabilities  
16 in such systems.

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

24 “(D) COVERT TESTING OFFICE.—The term  
25 ‘covert testing office’ means any office of the

1           Transportation Security Administration des-  
2           ignated by the Assistant Secretary of Homeland  
3           Security (Transportation Security Administra-  
4           tion) to conduct covert tests of transportation  
5           security systems.

6           “(E) EMPLOYEE OF A COVERT TESTING  
7           OFFICE.—The term ‘employee of a covert test-  
8           ing office’ means an individual who is an em-  
9           ployee of a covert testing office or a contractor  
10          or an employee of a contractor of a covert test-  
11          ing office.”.

Passed the House of Representatives June 18, 2008.

Attest:

*Clerk.*

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