

110TH CONGRESS
2^D SESSION

H. R. 5909

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2008

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

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

